

REPORTER'S RECORD

VOLUME 48 of 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT  
VS. : DALLAS COUNTY, TEXAS  
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

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TRIAL ON THE MERITS BY

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FILED IN  
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

HONORABLE BILL HILL, Criminal District Attorney  
Crowley Criminal Courts Building  
Dallas, Dallas County, Texas 75207  
Phone: 214-653-3600

BY: MR. GREG DAVIS, A.D.A., SBOT # 05493550  
MS. MARY MILLER, A.D.A., SBOT # 21453200  
FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210  
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500  
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880  
Dallas County Public Defender's Office  
Phone: 214-653-9400  
FOR THE DEFENDANT.

\*\*\*\*\*

On the 5th day of June, 2001, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable F. Harold Entz, Jr.,  
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer  
assisted transcription.

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1 P R O C E E D I N G S

2 THE COURT: Let the record -- let the record  
3 reflect this hearing is being conducted in open court,  
4 outside the presence and hearing of the impaneled jury. The  
5 defendant is present in court during the course of this  
6 hearing.

7 Mr. Davis, I think you have a matter that you want  
8 to put on the record.

9 MR. DAVIS: Yes, sir, I did.

10 THE COURT: Go ahead.

11 MR. DAVIS: Yes, sir. This is pursuant to the  
12 Court's rulings yesterday. When I came into the office this  
13 morning, I found these xeroxed copies of reports. Now, these  
14 are reports from Van Zandt County Sheriff's Office. I  
15 believe all of these reports have previously been tendered to  
16 defense counsel. I don't see anything new, but out of an  
17 abundance of caution, I'm going to at this time tender the  
18 copies that were on my desk this morning to defense counsel.

19 In addition --

20 THE COURT: Does defense acknowledge receipt  
21 of the reports?

22 MS. BALIDO: Yes, Your Honor.

23 MR. DAVIS: In addition, I found some copies  
24 of reports from the Dallas County Commercial Auto Theft Task  
25 Force. This would deal with an extraneous offense for which

1 the defendant is presently on probation here in Dallas  
2 County. And again, looking at the reports, I believe all of  
3 these have previously been tendered to defense counsel, but  
4 out of abundance of caution again, I'll tender those to  
5 defense counsel at this time.

6 MR. BYCK: We so acknowledge.

7 MR. DAVIS: Thirdly, I've just been given what  
8 appear to be notes from Judge Ozelle Wilcoxson who will  
9 testify this morning with regards to the -- to the  
10 arraignment of the defendant. This would appear to be the  
11 actual magistrate's warnings, as well as what appear to be  
12 certain typed -- typed notes regarding her scheduling and the  
13 times in which she did certain -- certain things in this  
14 case. I don't see anything exculpatory or mitigating in  
15 them, but again, I've just received those this morning so  
16 I'll tender those to defense counsel at this time.

17 MR. BYCK: So acknowledged.

18 THE COURT: Defense has a matter that they  
19 wish to bring to the Court's attention in the State's  
20 presence I understand?

21 MR. BYCK: Yes, Your Honor. We, having  
22 received the information yesterday of a search and seizure of  
23 the defendant's written notes, memoranda, and documents in  
24 the Dallas County Jail approximately three weeks ago, we  
25 would respectfully request a hearing before the Court in

1 which we would seek to determine either the legality of that  
2 search and seizure and if it was an illegal search and  
3 seizure, the amount of information that has been dispersed,  
4 where it has been dispersed, who had the information, and if  
5 that information led to other sources, facts, or information  
6 being developed, all of which would be in violation of the  
7 Defendant's Fourth Amendment rights and under the United  
8 States Constitution and the applicable provision of the Texas  
9 Constitution. I think it's Article 1, Section 10. And we  
10 respectfully ask for a hearing. We would submit to the Court  
11 that the people involved in the hearing are essentially in  
12 house. They would be either district attorneys, sheriffs  
13 officers, or sheriffs themselves, jail personnel.

14 THE COURT: How quickly do you need this  
15 hearing? Here's my -- here's my thinking. Friday is going  
16 to be a down day. We could either do it Friday or otherwise  
17 we'd have to do it very early some morning or late some  
18 afternoon.

19 MS. BALIDO: Well, what the situation -- what  
20 our concern is, Judge, is that there will be evidence placed  
21 before the jury, but for the fact that the legal search and  
22 seizure issue will, you know -- they would not have that  
23 information. And if that information's spread out or some  
24 investigation was done based on the information gleaned from  
25 the illegal search and seizure by the State, including notes

1 by the defendant to his lawyers, then the danger -- the peril  
2 is that it spreads all through the case and the case in chief  
3 by the State, so we'd like it as soon as possible.

4 THE COURT: May we begin it tomorrow morning  
5 at 8:30 and not have the jury come in until 10:00?

6 MR. DAVIS: That's fine. May I ask that the  
7 letters be provided to the Court for in camera inspection  
8 prior to the hearing so we can -- at least the Court at that  
9 time will be advised as to whatever may have been seized by  
10 the Dallas County Sheriff's Office.

11 MR. BYCK: Your Honor, we did receive -- we  
12 did receive a sealed package from the Dallas County Sheriff's  
13 Office. We have not opened that package.

14 THE COURT: All right.

15 MS. BALIDO: I'm sending the intern up to go  
16 get it, Judge.

17 MR. BYCK: And we would ask the District  
18 Attorney if he has any other --

19 MR. DAVIS: So if I understand, this motion is  
20 being made without the benefit of defense counsel actually  
21 looking at the material to see if there's anything material  
22 that may have been seized.

23 MS. BALIDO: Judge, this motion is being made  
24 based on the statements made by the District Attorney  
25 yesterday, that he saw those materials, that he did see that

1 those materials were letters that were written to --

2 MR. DAVIS: No, I'm sorry. That is not my  
3 statement.

4 MS. LITTLE: He said conceivably could have  
5 been, but had not been --

6 MR. DAVIS: My understanding was -- let me  
7 make this very clear, that that was not a letter that had  
8 been written to defense counsel.

9 MS. BALIDO: That's --

10 THE COURT: The Court will accept the  
11 invitation to see the documents in camera and make a  
12 determination.

13 MS. BALIDO: That's all for you.

14 MR. BYCK: And we would inquire of the  
15 District Attorney, Your Honor, whether there were any other  
16 documents that he retained or whether he made -- whether he  
17 has a file with a complete set of copies of the documents  
18 that were subsequently re-returned to the Dallas County  
19 Sheriff's Office.

20 MR. DAVIS: No. Those were the only documents  
21 that were viewed, so that -- and as I've stated, my  
22 recollection was that two of those letters were from family  
23 members to the defendant so there would be absolutely no  
24 privilege at all there. The other was not in the form of a  
25 letter. It was in the form of notes. They were not

1 addressed to anyone. So what --

2 THE COURT: In the interest of everybody's  
3 time, if I may take a look in camera and determine the nature  
4 of --

5 MR. BYCK: They're on their way down. We  
6 thank the Court.

7 MS. BALIDO: Judge, we additionally have three  
8 other issues we'd like to take up. First, this morning we  
9 filed with the Court and served on the State's attorneys a  
10 motion for mistrial pursuant to the decision of the United  
11 States Supreme Court yesterday in what we'll call Penry II.  
12 The United States Supreme Court reversed and remanded the  
13 case of the State of Texas versus Johnny Paul Penry --

14 THE COURT: Have you -- have you read the  
15 opinion and --

16 MS. BALIDO: I have, Your Honor.

17 THE COURT: The instructions that this jury  
18 will be given are totally different from Penry II, so -- how  
19 is this germane --

20 MS. BALIDO: Judge --

21 THE COURT: -- to the issue before this jury?

22 MS. BALIDO: Judge, we will submit that it is  
23 germane because if you read the text, it is true that Penry's  
24 instructions were different than the instructions that are  
25 going to be given to this jury. However --

1 THE COURT: Totally different.

2 MS. BALIDO: Totally different. However, and  
3 the Court does say that the Texas sentencing statute as it is  
4 now that this jury will consider is more clear than the  
5 instructions given under Penry II. However, Judge, if you  
6 read the text of the opinion, it says basically that -- in  
7 explaining Penry I in relation to the consideration of  
8 mitigating circumstances by capital sentencing juries, the  
9 State clears up what Penry I said and did not say. And what  
10 Penry -- and this is the Supreme Court, Justice O'Connor  
11 writing the opinion, that Penry I did not hold that the mere  
12 mention of mitigating circumstances to a capital sentencing  
13 jury satisfies the 8th Amendment. Nor does it stand for the  
14 proposition that it's constitutionally sufficient to inform  
15 the jury that it may, quote, consider, that's a quote inside  
16 the language, mitigating circumstances in deciding the  
17 appropriate sentence. Rather, the key under Penry I is that  
18 the jury is able to consider and give mitigating effect to,  
19 that's the emphasis added by the Supreme Court, a defendant's  
20 mitigating evidence and imposing sentence.

21 What our contention is, is during jury selection in  
22 this case, attempts were made by the defense to inquire as to  
23 the potential jurors whether or not they could, quote, give  
24 mitigating effect to certain evidence. And those attempts to  
25 bring forth that response from those potential jurors was



1 thwarted by an objection from the State and the sustaining of  
2 that objection by the State by this Court.

3 THE COURT: I disagree with that.

4 MS. BALIDO: Well, Judge --

5 THE COURT: And the record will speak for  
6 itself.

7 MS. BALIDO: The record will speak for itself.

8 THE COURT: I totally disagree.

9 MS. BALIDO: Judge, what the Court allowed us  
10 to do is determine whether or not they would consider  
11 mitigating evidence, but --

12 THE COURT: And I on my own, Ms. Balido, asked  
13 each prospective juror, whether they were challenged for  
14 cause or not, if they could give effect to mitigating  
15 evidence, if presented, and address Special Issue Number 2  
16 accordingly.

17 MS. BALIDO: Judge --

18 THE COURT: That's what I recall the record of  
19 months of jury selection to reflect.

20 MS. BALIDO: Judge, the record will be clear  
21 on what was said and what was not said. If you remember that  
22 there were times that we attempted to get into mitigating  
23 evidence to determine whether or not they would give  
24 mitigating effect to certain evidence. And besides --  
25 everyone said that they could consider it. But when we

1 attempted to go further to see if they could actually give  
2 mitigating effect to that, you denied us the ability to do  
3 that. And we attempted to go through there -- I cited two  
4 cases, one was the Maldonado case, a 1999 case, and one was  
5 another case that was a 1993 case that I believe that you  
6 said was somebody that wasn't on the Court of Appeals -- on  
7 the Court of Criminal Appeals anymore and that you weren't  
8 going to rely upon that opinion. And the defendant asserts  
9 that we were denied the ability to go as far as Penry II  
10 seems to say that we are able to in questioning these jurors  
11 as to whether or not they can give mitigating effect to the  
12 evidence presented in the sentencing phase if we get that  
13 far. And that's the basis of our motion for a mistrial at  
14 this point.

15 THE COURT: Defense request for a mistrial is  
16 denied.

17 MS. BALIDO: Secondly, Judge, it seems from  
18 the way we kind of ended up yesterday in relationship to my  
19 questions outside the presence of the jury to Deputy Rose of  
20 the Van Zandt County Police Department, that I have not been  
21 making myself clear as to what I'm trying to suppress in  
22 regard to the oral confessions. I'm basing my -- my Motion  
23 to Suppress as to the oral statements on the case of Moon  
24 versus State, 607, 569. Basically I think it's kind of  
25 the -- the thinking of everyone in the courtroom that

1 because Mr. Murphy made an oral statement that was  
2 therefore -- that was later proved to be true by the finding  
3 of Ms. Cunningham's body, under 38.22(C), that means that  
4 oral statement comes in. But what the Moon case says and  
5 what I'm trying to develop through Deputy Rose's testimony  
6 and the testimony of later on Jason Bonham of the Edgewood  
7 Police Department is that Mr. Murphy was not Mirandized  
8 properly and did not voluntarily waive his rights under  
9 Miranda versus Arizona when he made these statements. And I  
10 think the record -- at least at this point the way that the  
11 record has been developed is that he did not voluntarily  
12 waive those rights. There was no statement by the defendant  
13 that he understood those rights and he read those. And under  
14 Moon versus State --

15 THE COURT: And there was no statement that he  
16 didn't understand them.

17 MS. BALIDO: That's true and --

18 THE COURT: He's not a rookie in the criminal  
19 justice system.

20 MS. BALIDO: Well, Judge, I understand that,  
21 but what my concern is, is that these statements will get out  
22 in front of the jury before there is a trial court finding  
23 that those were either voluntarily waived or not. And under  
24 the Moon case it says that is an issue not for the jury as  
25 under 38.22 when we're talking about written statements, but

1 is an issue for the trial court to determine as for two  
2 things. Number one, due process requirements of  
3 voluntariness and the requirements, number two, of Miranda  
4 are first met. And that's what I'm trying to get to by  
5 trying to get the jury out of the room, develop these  
6 things --

7 THE COURT: Well, let's -- how much more  
8 proffer do you want, Ms. Balido? Do you want more proffer  
9 this morning before the jury comes in?

10 MS. BALIDO: I'd like to ask a couple of  
11 questions.

12 THE COURT: Let's get going. And from now on,  
13 tomorrow morning everybody be here at 8:30. This is the type  
14 of abuse that jurors must suffer throughout this country  
15 about which they get so frustrated, so we're going to be in  
16 here tomorrow morning 8:30, everybody in their chair whether  
17 we do nothing or have a hearing.

18 Bring in the officer.

19 MR. DAVIS: He's getting him.

20 MS. BALIDO: Judge, I can just -- there's just  
21 one -- one more thing that I'd like to put on the record and  
22 just a clarification matter that we don't have to have a  
23 hearing about or anything like that. Under 24.03 of the Code  
24 of Criminal Procedure, it states that both parties can rely  
25 upon the subpoenas of the other party. And I'm not concerned

1 about us relying upon the subpoenas of the other party or the  
2 State relying upon our subpoenas. What my concern is, is  
3 that the District Attorneys Office has an agreement with  
4 various police agencies that they do not have to subpoena  
5 witnesses to come down here to testify, that they can just  
6 call either a routing officer or whatever. And we would like  
7 to be rely on the fact that the people that they have not  
8 subpoenaed, but have an agreement with the police agency that  
9 if they call their officers, they'll be down here, that we  
10 would like to be able to rely upon that agreement as well, or  
11 if we need to go out and subpoena all these other witnesses  
12 that the State is not going to call to testify.

13 THE COURT: Mr. Davis, care to respond?

14 MR. DAVIS: Well, you know, the agreements  
15 that we have with various police agencies do not guarantee  
16 that if I issue a routing slip this morning, that officer is  
17 going to appear today. I mean, some of these agencies  
18 require certain time periods. There are a lot of -- lot of  
19 officers that may be on this witness list that I have no  
20 intentions of routing, for instance. I'll say right now I've  
21 only routed two Garland police officers for instance. We  
22 don't have any arrangements with the Van Zandt County  
23 Sheriff's Department or Wills Point PD or Terrell PD or  
24 Edgewood PD. We simply contact those departments, issue  
25 subpoenas, if necessary, so --

1 THE COURT: Ms. Balido, what I'm hearing from  
2 Mr. Davis, if you want to guarantee their presence, I think  
3 it's incumbent upon the defense to issue a subpoena for those  
4 individuals that you reasonably anticipate will be needed.

5 MR. BYCK: May I tender this for the record,  
6 Your Honor?

7 Your Honor, may the record reflect I'm tendering to  
8 the Court a sealed involve styled attempted suicide, and we  
9 would have it marked as defendant's -- whatever the court  
10 reporter says.

11 THE COURT: The Court acknowledges receipt,  
12 and I will review it before the day is up.

13 Ms. Balido, you may continue with the proffer.

14 GARY ROSE  
15 was called as a witness by the Defendant and, after having  
16 been first duly sworn, testified as follows:

17 Direct Examination

18 By Ms. Balido:

19 Q. And are you the same Gary Rose that testified  
20 yesterday in the trial of this case?

21 A. Yes, ma'am.

22 Q. Detective Rose, I'm going to direct your attention  
23 back to when you said that you had entered the bedroom of Ora  
24 Mae Milton's house and took the defendant into custody.  
25 Okay?

1 A. Okay.

2 Q. Now, you said that you took the defendant into  
3 custody upon immediately walking into the room; is that  
4 correct?

5 A. Yes, ma'am.

6 Q. Okay. And he was therefore not free to leave?

7 A. Correct.

8 Q. Okay. And you actually placed him under arrest; is  
9 that correct?

10 A. Yes, ma'am.

11 Q. And then you recited the warnings that you gave him?

12 A. Yes, ma'am.

13 Q. Okay. I want to -- and then you told us yesterday  
14 that he did not have any reaction to the warnings that you  
15 gave him?

16 A. That's correct.

17 Q. Okay. Did he ever tell you that he understood the  
18 warnings that you gave him?

19 A. I don't remember.

20 Q. Okay. Are you saying it didn't happen, or you don't  
21 remember?

22 A. I don't remember.

23 Q. Okay. Did he ever ask you any questions regarding  
24 those warnings?

25 A. No, ma'am.

1 Q. Did he ever say that he understood his warnings and  
2 that he wanted to give up his rights and make a statement to  
3 you?

4 A. I don't recall him -- I don't remember him saying he  
5 understood his warnings, and he never made the statement that  
6 he wanted to give a statement to me, no.

7 Q. Okay. And then after you talked to him on this, did  
8 you ask him questions regarding this offense?

9 A. Yes, ma'am.

10 Q. Okay. Did he have any reaction at all to -- in  
11 response to these warnings?

12 A. No, ma'am.

13 Q. Okay. The things that he told you regarding the  
14 offense, was that in response to questions that you asked  
15 him?

16 A. Yes, ma'am.

17 Q. Okay. And not just things that he blurted out once  
18 he got arrested?

19 A. Correct.

20 Q. And what did you ask him about the offense?

21 A. I asked him where Bertie Cunningham was.

22 Q. And what was his response?

23 A. His response was he said, "it was an accident, I  
24 didn't mean to shoot her." And then I asked him where -- I  
25 asked him if she was dead. And he said, yes. And I asked



1 him where her body was.

2 Q. And what did he say?

3 A. He initially -- he told me that he didn't know where  
4 the body was, that somebody had put it in the trunk of the  
5 car and carried it off somewhere in the Dallas area.

6 Q. That he put it in the trunk of the car and what --

7 A. Someone else other than him had put it -- put the  
8 body in the trunk of the car and dumped it in the Dallas area  
9 somewhere. He didn't know where it was.

10 Q. Were there any other statements besides those  
11 statements that he made to you in regard to this offense?

12 A. No.

13 Q. How long were you in there with Mr. -- with Mr.  
14 Murphy?

15 A. Approximately 5, 6 minutes. It wasn't long.

16 Q. And was -- did anybody else in your presence give  
17 him any Miranda warnings?

18 A. No, ma'am.

19 Q. And you were the first person to see him that night?

20 A. Yes, ma'am.

21 Q. I guess the first person -- first law enforcement  
22 officer to see him after he was awake; is that correct?

23 A. After he was awake -- well, I was the first one in  
24 the room. And of course, I had other officers behind me, but  
25 I was the first one in the room. And then we were all there

1 together.

2 Q. Okay.

3 A. So --

4 Q. And who was the other officers that were there?

5 A. I believe it was Sergeant Rick Goldey, Corporal Joey  
6 Branch. I think Jason Bonham was in the room, of the  
7 Edgewood Police Department. And I can't remember who else  
8 was in the room.

9 Q. And -- and what was the last one?

10 A. I believe it was -- I believe Jason Bonham of the  
11 Edgewood Police Department was in the room. I'm not for  
12 certain. And I don't know who else was in the room.

13 Q. Do you carry a copy of either the Miranda warnings  
14 or a 38.22 card with you?

15 A. No, ma'am.

16 Q. So this is just all done from your own memory?

17 A. Yes, ma'am.

18 Q. And at any time did Mr. Murphy waive his warnings  
19 and say he did not want any of his -- he did not want a  
20 lawyer or anything else and he just wanted to make a  
21 statement?

22 A. No, ma'am, he did not say that.

23 Q. And he didn't say that he wanted his Miranda  
24 warnings. He just didn't say anything?

25 A. He didn't say anything.

1 Q. Do you know or not know if Officer Goldey or Branch  
2 or Bonham heard you give those Miranda warnings?

3 A. I don't -- I don't know if they heard because I was  
4 looking at him. They were behind me. I don't know if they  
5 were still in the room or if they heard it.

6 MS. BALIDO: Pass the witness for the purpose  
7 of this proffer, Judge.

8 MR. DAVIS: No questions.

9 MS. BALIDO: Judge, based on the -- we would  
10 like to call Jason Bonham to the stand.

11 THE COURT: You may step down, Officer.

12 MS. BALIDO: Judge, Jason Bonham is not here.  
13 It is my assumption that he was going to be here and was  
14 going to be a witness for the State, and also Officer Goldey  
15 is not here and --

16 Is Branch here or is Branch not here?

17 MR. DAVIS: Let me just state for the record  
18 that the only member of the Van Zandt County Sheriff's  
19 Department who is here today is Gary Rose. Right now I've  
20 got no officers from Edgewood or Wills Point. No one from  
21 the defense has ever asked me to produce those people for  
22 today's hearing or for any testimonies. No, they're not  
23 here.

24 MS. BALIDO: Judge, at this time we would --  
25 Jason Bonham is subpoenaed for the defense. We would like an

1 opportunity to have him come down and testify for the Court.  
2 I think that that can be done within the hour. And based on  
3 the conversation that we had this morning on reliance of the  
4 State's subpoena or the State's witness list and the ruling  
5 of the Court, we are not prepared and have not served Officer  
6 Goldey or Joey Branch and would like an opportunity to do so.

7 THE COURT: Once again, classic example of the  
8 frustration that jurors have with regard to courts. And I am  
9 prepared after this trial is over to explain to the jury just  
10 exactly what's happened. Will not do so during the trial for  
11 obvious reasons, but I want both sides to understand my  
12 impatience with the way that this jury is being treated, and  
13 I think it is very, very unprofessional. Counsel has known  
14 for months and months and months what this was all about, and  
15 now to have these good 13 citizens have their time wasted by  
16 gamesmanship is I find unacceptable.

17 Call a recess and get them down here.

18 MS. LITTLE: Your Honor, can I use this phone  
19 to call upstairs?

20 THE COURT: You may.

21 (Recess taken.)

22 THE BAILIFF: All rise.

23 (Jury returned to courtroom.)

24 THE COURT: Let the record reflect the jury is  
25 returning to the courtroom at this time.

1 Jurors may be seated.

2 Mr. Murphy, counsel, visitors in the gallery, you  
3 may be seated.

4 Good morning.

5 THE WITNESS: How are you?

6 (Witness sworn.)

7 THE COURT: Thank you. Invite you to have a  
8 seat, please.

9 Counsel may continue.

10 OZELLE WILCOXSON

11 was called as a witness by the State and, after having been  
12 first duly sworn, testified as follows:

13 Direct Examination

14 By Ms. Miller:

15 Q. Could you please introduce yourself to the jury and  
16 then spell your last name for the court reporter?

17 A. My name is Ozelle Wilcoxson, O-z-e-l-l-e and then  
18 W-i-l-c-o-x-s-o-n.

19 Q. Ms. Wilcoxson, how are you employed?

20 A. I serve as a Justice of the Peace for Van Zandt  
21 County.

22 Q. Can you tell the jury what area Van Zandt County  
23 encompasses?

24 A. I serve Precinct 3 which is the Wills Point area and  
25 the rural area of Edgewood to Highway 80 and then all the way

1 to Interstate 20 and then to Lake Tawakoni.

2 Q. How long have you held that position?

3 A. For 15 years plus a few months.

4 Q. Were you originally appointed to that position and  
5 then have been reelected?

6 A. I was appointed for an unexpired time of an ill and  
7 dying JP, and then I have been elected since, yes, ma'am.

8 Q. Can you please tell this jury what some of your  
9 duties and responsibilities as a JP out there are?

10 A. Well, your Justice of the Peace Court is a people's  
11 court, and we deal with Class C misdemeanors, mostly with the  
12 trooper citations and your Van Zandt officers. We do not  
13 deal with any police officers within the cities. We have  
14 civil courts, and we also in our rural areas where there's no  
15 medical examiner, we serve as the coroners of our county and  
16 we also serve as magistrates.

17 Q. Can you explain to the jury what a magistrate is?

18 A. A magistrate is just simply a Justice of the Peace  
19 or municipal court who will be called on to read the Miranda  
20 rights to someone who is accused of a crime.

21 Q. I want to direct your attention back to October 6th  
22 of 2000, last year, and were you JP at that time, also?

23 A. That's correct.

24 Q. Did you receive a call at approximately 3:36 a.m.  
25 from the Van Zandt County Sheriff's Department?

1 A. It was shortly before 4 o'clock a.m. that morning.

2 Q. Okay. And can you tell the jury the nature of that  
3 dispatch or call?

4 A. I was called to go on an inquest in the area of the  
5 City of Edgewood.

6 Q. And what again is an inquest for the jury?

7 A. An inquest is where we go out to the scene where a  
8 body has been found and we go out and a JP is not called  
9 until there is an actual death. And we are to --

10 MS. BALIDO: Judge, I'm going to object to the  
11 relevance of this testimony at this point based on the  
12 proffer made by the State in regard to what she's going into  
13 now.

14 THE COURT: Sustained.

15 MS. BALIDO: I'd ask that the jury be  
16 instructed not to --

17 THE COURT: The jury will disregard the last  
18 portion of the witness's testimony and consider it for no  
19 purpose.

20 Q. (By Ms. Miller) You were called out originally for  
21 an inquest; is that correct?

22 A. That's correct.

23 Q. Did you meet a sheriff's deputy at the Dairy Queen  
24 there in Edgewood?

25 A. I did.

1 Q. Okay. When you got to Edgewood, did you -- to the  
2 Dairy Queen in Edgewood, did the nature of your call or  
3 dispatch change?

4 A. I was then told that I would be arraigning a  
5 suspect.

6 Q. And when you found out that you were going to have  
7 to arraign a suspect, did you have any actual warnings or the  
8 magistrate paperwork with you at that point?

9 A. No, I did not.

10 Q. So what did you have to do?

11 A. I went to Canton to the Van Zandt County Justice  
12 Center where we have those type papers on file there and to  
13 get an arraignment sheet.

14 Q. Okay. Now, at the point that you found out that you  
15 were going to have to arraign someone, did you know that  
16 person's name at that point?

17 A. No, I did not.

18 Q. Okay. Did you know whether or not he was being  
19 arrested on a -- outstanding Garland warrant?

20 A. I don't believe that I did at that point.

21 Q. Okay. Now, when you went to Canton to get your --  
22 the magistrate warnings, did you then go back to the Edgewood  
23 Police Department in order to actually perform the  
24 arraignment?

25 A. Well, I actually had not gone to the police



1 department prior to that, but when I got the proper  
2 paperwork, I was -- I was taken to the Edgewood Police  
3 Department.

4 Q. And when you got to the Edgewood Police Department,  
5 did you come in contact with Detective Matt Myers from the  
6 Garland Police Department and Deputy Gary Rose from the Van  
7 Zandt Sheriff's Department, along with a person -- an  
8 arrested person or suspect that you later came to know as  
9 Jedidiah Isaac Murphy?

10 A. I believe when I arrived, I was there with the --  
11 the sheriff's deputy that brought me there and then they came  
12 in shortly thereafter.

13 Q. Okay. When you say "they," was that Detective  
14 Myers, Deputy Rose, and a person that was identified as  
15 Jedidiah Isaac Murphy?

16 A. That's correct.

17 Q. Okay. Now, when you arraign a defendant, can you  
18 explain to the jury a little bit about what process that you  
19 go through?

20 A. Can I look at --

21 Q. You bet. You have some notes there with you?

22 A. I do. I have the arraignment sheets on two charges  
23 that I arraigned a person identified as Jedidiah Isaac  
24 Murphy. When I -- when I arraign, I usually introduce  
25 myself. This is my policy. I explain to them what I am

1 about to do, and I fill out the paperwork. And then I read  
2 the magistrate warning. And I read these and as I do, I  
3 check them off and as a policy -- as a general rule, I will  
4 ask them if they understand these things that I'm reading.

5 MS. MILLER: May I approach, Your Honor?

6 THE COURT: You may.

7 Q. (By Ms. Miller) Judge Wilcoxson, I'm going to show  
8 you what's marked as State's Exhibits Number 35 and 36. And  
9 do you recognize these?

10 A. Yes, I do.

11 Q. Are they true and correct copies of the arraignment  
12 sheets that you filled out on October 6th of 2000 when you  
13 arraigned Jedidiah Isaac Murphy?

14 A. They are.

15 Q. Do you fill out everything on the sheet other than  
16 have the person being arraigned signing it and then  
17 initialing each of the warnings?

18 A. That's correct.

19 Q. Have there been any additions, deletions, or  
20 alterations? You have the originals; is that correct?

21 A. Yes. No, there is not.

22 MS. MILLER: Your Honor, at this time we would  
23 offer State's 35 and 36, tender to opposing counsel.

24 (State's Exhibit No. 35 and 36 offered)

25 MS. BALIDO: Judge, I'd just ask to look at

1 also her notes that are the originals of such documents  
2 before we --

3 THE COURT: Request granted.

4 (Counsel inspects notes.)

5 MS. BALIDO: Judge, no objection to State's 35  
6 and 36.

7 Oh, I'm sorry.

8 THE COURT: They are admitted.

9 (State's Exhibit No. 35 and 36 admitted)

10 Q. (By Ms. Miller) Judge Wilcoxson, according to your  
11 notes or do you recall, did you arraign the defendant on a  
12 credit card abuse first?

13 A. Yes, ma'am, I did.

14 Q. Okay. And as far as State's Exhibit Number 35, it  
15 sets out the different warnings. Can you just read the  
16 warnings that you read to Jedidiah Isaac Murphy?

17 A. I read the offense. "You are charged with the  
18 offense of credit card abuse, Warrant Number RL30225, Garland  
19 Police Department, Garland, Texas. An affidavit charging you  
20 with this offense has not been filed in this court. You have  
21 a right to have a lawyer and have your lawyer present prior  
22 to and during any interview and questioning by peace officers  
23 or attorneys representing the State. If you are too poor to  
24 afford a lawyer, you have the right to request the  
25 appointment of a lawyer to be present prior to and during any

1 such interview and questioning. You may have reasonable time  
2 and opportunity to consult your lawyer if you desire. You  
3 have the right to remain silent. You are not required to  
4 make a statement, and any statement you make can and may be  
5 used against you in court. You have the right to stop any  
6 interview or questioning at any time. And with felonies you  
7 have the right to have an examining trial."

8 Q. Now, Judge Wilcoxson, I believe that you had stated  
9 earlier that after each one of those warnings -- and they are  
10 numbered; is that correct?

11 A. That's correct.

12 Q. After each warning, did you ask the defendant  
13 whether he understood that particular warning?

14 A. That is my policy, and I believe that I did.

15 Q. Okay. And, Judge Wilcoxson, do you see the person  
16 that you came to know as Jedidiah Isaac Murphy here in the  
17 courtroom?

18 A. I feel that I do.

19 Q. Can you point him out, describe what he's wearing  
20 today?

21 A. He's the young man over with the business suit and  
22 tie on.

23 Q. What color tie is he wearing?

24 A. It's a dark tie.

25 MS. MILLER: Okay. Your Honor, we'd ask the

1 record reflect that the witness has identified the defendant  
2 in open court.

3 Q. (By Ms. Miller) Now, did the defendant tell you  
4 that he -- or acknowledge to you that he understood each and  
5 every one of the warnings after you read them to him?

6 A. He was very quiet, but, yes, he did, either with a  
7 nod or a yes.

8 Q. Okay. And did you have the defendant initial each  
9 and every one of the warnings, showing that he understood  
10 them?

11 A. Yes, I did.

12 Q. Okay. And did he sign his name down at the bottom  
13 acknowledging that you read them, read him the warnings, and  
14 that he understood them?

15 A. He signed as the person warned.

16 Q. Okay. Now, on State's Exhibit Number 35 and 36,  
17 there is a line or a signature "Gary Rose," under witnesses.  
18 Is that Deputy Gary Rose of the Van Zandt County Sheriff's  
19 Department?

20 A. That's correct.

21 Q. Also there is -- under "remarks" it says "known  
22 address 1718 Barclay, Richardson, Texas." And it says  
23 09-01-75 WM. Is that a date of birth 9-1 of 1975?

24 A. That's correct.

25 Q. And WM meaning white male?

1 A. That's correct.

2 Q. Drivers license unknown?

3 A. Unknown by me at that time.

4 Q. As far as the address goes, do you have the person  
5 arraigned, in this particular case the defendant, Jedidiah  
6 Isaac Murphy, acknowledge that that is in fact his address?

7 A. That is my policy, and I have no reason to believe  
8 that it was not done.

9 Q. Now, do you recall whether or not he's the one that  
10 actually gave you that address or whether you obtained it  
11 from someone else?

12 A. I do not recall.

13 Q. Okay. But as far as your policy is, you at least  
14 get them to verify that that is the particular address?

15 A. That's correct.

16 Q. Okay. Now, on State's Exhibit Number 36, that is a  
17 magistrate warning for the offense of murder; is that  
18 correct?

19 A. Yes, ma'am.

20 Q. Are the -- is State's Exhibit Number 36 almost  
21 identical to State's Exhibit Number 35, other than what the  
22 charge is and the bail amount?

23 A. Except for the offense and the bail amount.

24 Q. Okay. And once again, is this arraignment done  
25 separate and apart from the credit card abuse arraignment?

1 A. It is.

2 Q. So you read the warnings that you already read to  
3 this jury two times to the defendant; is that correct?

4 A. That's correct.

5 Q. And did you also stop and ask the defendant after  
6 each warning whether or not he understood them as you were  
7 arraigning him the second time for the murder charge?

8 A. That's my policy, and I have no reason to believe  
9 that I did not.

10 Q. And on State's Exhibit Number 36, does it also show  
11 that he initialed each and every one of those warnings  
12 showing that he understood those?

13 A. Yes.

14 Q. And did he also on State's Exhibit Number 36 sign as  
15 the person that was in fact warned?

16 A. He did.

17 Q. Now, Judge Wilcoxson, you said that you have been  
18 the Justice of the Peace for a little over 15 years. In your  
19 15 years as a JP and arraigning different people, have you  
20 had the occasion to come in contact with intoxicated persons?

21 A. I have.

22 Q. And when you came in contact with the defendant, did  
23 he appear to be intoxicated at the time that you were giving  
24 him the warnings?

25 A. I'm no expert, but I did not believe that he was

1     intoxicated.

2           Q.     Okay.  If someone is intoxicated when you go to  
3     magistrate or arraign them, do you go ahead and proceed with  
4     the arraignment or do you stop at that point and wait for  
5     them to sober up?

6           A.     As a norm, as magistrates in Van Zandt County, we do  
7     most of our magistrating at the Van Zandt County jail.  And  
8     most of the time the defendants are not brought to us until  
9     the next morning or afternoon.

10          Q.     If he had been intoxicated, would you have continued  
11     the arraignment or would you have postponed it until you felt  
12     that he was sober enough to proceed with the arraignment?

13          A.     I would not have arraigned this young man if he --  
14     if I had felt he was intoxicated.

15          Q.     Okay.  Judge Wilcoxson, when you were magistrating  
16     the defendant, you said that he appeared to understand each  
17     and every one of his warnings and he either acknowledged it  
18     by saying yes or by nodding; is that correct?

19          A.     That's correct.

20          Q.     And you said that he did not appear to be  
21     intoxicated.  Did you smell any odor of an alcoholic beverage  
22     on the defendant when you arraigned him?

23          A.     No, I did not.

24          Q.     Can you tell this jury how close in proximity the  
25     defendant was to you during the arraignment?



1           A.    I was sitting at a desk in the outer room of this  
2 small police department, and the defendant was standing  
3 directly in front of the desk.

4           Q.    Okay. And have you had the opportunity when you  
5 have arraigned defendants in the past to smell the odor of an  
6 alcoholic beverage on the defendant before?

7           A.    I have. And sometimes there's a stale odor of  
8 alcoholic beverages.

9           Q.    Now, when the defendant -- when you were arraigning  
10 the defendant on the credit card abuse and on the murder  
11 case, did he show any signs of remorse to you?

12          A.    No, he did not.

13          Q.    Was he crying when you told him that he was being  
14 charged with murder or credit card abuse?

15          A.    No, he was not.

16          Q.    Okay. Did he -- did he appear to be hallucinating  
17 or hearing voices or not understanding what was going on  
18 around him?

19          A.    No.

20          Q.    How -- what was the defendant's demeanor when you  
21 were arraigning him, Judge?

22          A.    Just a kid, and he appeared sleepy.

23          Q.    Did he appear calm?

24          A.    Yes.

25          Q.    Judge Wilcoxson, when the defendant was brought

1 before you for the arraignments, you read him his Miranda  
2 warnings. Do you -- or did you know whether or not he had  
3 been given any Miranda warnings prior to his arrival at the  
4 Edgewood Police Department?

5 MS. BALIDO: Judge, we'd object to that first  
6 as hearsay, and, secondly, based on our objection that is, I  
7 guess, pending before the Court at this time.

8 THE COURT: Objection is overruled on both  
9 counts at this point.

10 Q. (By Ms. Miller) Did you know whether he had been  
11 given his Miranda warnings prior to arriving before you?

12 A. I do not recall that being discussed in my presence.

13 Q. Regardless of whether the defendant had been given  
14 Miranda warnings prior to arriving before you at the Edgewood  
15 Police Department, would you go ahead and give him the same  
16 warnings that are shown in State's 35 and 36, regardless of  
17 how many times he had been Mirandized prior to his appearance  
18 before you?

19 A. That's correct, I would.

20 Q. Okay. So if he had been given his Miranda warnings  
21 ten times prior to coming before you, you would still give  
22 him the same warnings that you gave him as evidenced in  
23 State's 35 and 36?

24 MS. BALIDO: Judge, that assumes facts not in  
25 evidence at this time.

1 THE COURT: Overruled.

2 You may answer, Judge.

3 A. Yes, I would.

4 Q. (By Ms. Miller) Judge Wilcoxson, thank you very  
5 much.

6 MS. MILLER: And we'll pass the witness. And,  
7 Judge, as stated previously, her notes have already been  
8 tendered to the defense.

9 Cross-Examination

10 By Ms. Balido:

11 Q. Judge Wilcoxson, my name is Jennifer Balido, and I  
12 represent Jedidiah Murphy in this case. And I'm going to ask  
13 you some questions about the warnings that you gave him in  
14 this case.

15 A. Okay.

16 Q. Let me ask you -- State's Exhibit Number 35 is  
17 actually the credit card abuse warnings; is that correct?

18 A. That's correct.

19 Q. Okay. And that actually has a credit card abuse  
20 warrant number on it?

21 A. That's correct.

22 Q. Okay. Now, State's Exhibit Number 36 is the  
23 warnings that you gave for a murder case; is that correct?

24 A. That's correct.

25 Q. It just says murder, it doesn't say capital murder?

1 A. That's correct.

2 Q. Okay. Are there any additional warnings that you  
3 give a capital -- well, first, let me ask, have you ever  
4 given any warnings to someone that was charged with capital  
5 murder?

6 A. Over the past 15 years probably one or two, and I  
7 could not remember when.

8 Q. Okay. Is there anything special that you do when  
9 you're arraigning somebody on capital murder charges in  
10 relationship to the fact that the State can seek the death  
11 penalty?

12 A. No, I read these Miranda rights.

13 Q. Okay. Did you actually have the credit card abuse  
14 warrant in your hand when you arraigned him on the credit  
15 card case?

16 A. I do not recall that, no.

17 Q. And I assume that you did not have any sort of  
18 warrant or affidavit for arrest warrant regarding the murder  
19 case?

20 A. Not at that time.

21 Q. And actually he was being arraigned for murder, not  
22 investigation of murder or not investigation of capital  
23 murder?

24 A. He was being arraigned for the charge, with the  
25 offense of murder.

1 Q. Now, you said that -- that you did not have any  
2 arraignment papers with you at the time?

3 A. No, I did not.

4 Q. Okay. Did you have a Penal Code with you at the  
5 time?

6 A. No, I did not.

7 Q. Okay. Did you -- is it commonly your practice or  
8 not your practice to read out of or to refer to the Penal  
9 Code when you're arraigning somebody on the charges that they  
10 may be held on?

11 A. There are occasions that I do.

12 Q. Okay. And on what occasions were those?

13 A. Those would be when I would be in a setting where I  
14 had the books available with me.

15 Q. But they don't have -- you didn't -- they don't have  
16 any books like that at the Edgewood Police Department?

17 A. If they were, they were locked up. I did not have  
18 the availability of them, no.

19 Q. Okay. But if those books had been available, then  
20 do you think it would have been your practice to go ahead and  
21 read out what the actual charge, the Penal Code -- is it  
22 19.01, capital murder or murder would be?

23 A. That is not a norm that I would do because I don't  
24 handle these kind of cases that much in Van Zandt County.

25 Q. Okay. In effect, this was kind of an out of the

1 ordinary experience?

2 A. Well, to begin with, I was called out to do an  
3 inquest. And then I was asked to magistrate a defendant.

4 Q. And you said that it's usually the practice of the  
5 Van Zandt County Sheriff's Department to bring people down in  
6 the morning so you usually don't see intoxicated people  
7 because they've usually slept it off?

8 A. Well, that's not always the case. I've had  
9 occasions when intoxicated people would come before me in the  
10 morning and I would not arraign them because I felt like that  
11 they were not able to understand all that I would be saying  
12 to them at that time.

13 Q. Okay. So even after they've been sitting in the  
14 jail for a little while, they still haven't slept it off  
15 enough to fully understand their warnings?

16 A. I'm not an expert, but there are occasions that I  
17 feel uncomfortable with arraigning them and I do not do it.

18 Q. Let me ask you a little bit about these warnings  
19 that you read to Mr. Murphy. It says basically in the first  
20 warning that you're charged with the offense of -- in one of  
21 them, credit card abuse, and the other one murder; is that  
22 correct?

23 A. That's correct.

24 Q. But it does not set out what the punishment range is  
25 for those offenses, either credit card abuse or murder?

1 A. No, it does not.

2 Q. Additionally, you put down that an affidavit  
3 charging you with this offense has not been filed with the  
4 court and that's in both cases?

5 A. That's correct.

6 Q. So you didn't know any -- you did not have an  
7 affidavit in front of you stating the facts of this offense?

8 A. No, I did not.

9 Q. Okay. Warning Number 2 is you have the right to  
10 hire a lawyer and have your lawyer represent (sic) prior to  
11 and during any interview and questioning by peace officers or  
12 attorneys representing the State; is that correct?

13 A. Have your lawyer present prior to and during any  
14 interview.

15 Q. Oh, I'm sorry. It kind of sounded kind weird when I  
16 said it.

17 A. Okay.

18 Q. I'm sorry. If you are too poor to hire -- I'm  
19 sorry. If you are too poor to afford a lawyer, you have the  
20 right to request the appointment of a lawyer to be present  
21 prior to and during any such interview and questioning and  
22 you may have reasonable time and opportunity to consult your  
23 lawyer if you desire.

24 Is that basically what Number 2 says?

25 A. That's correct.

1 Q. Okay. And you said at each point -- well, let me  
2 ask you -- ask it this way. Did you ever inquire as to Mr.  
3 Murphy whether or not he was indigent?

4 A. No, I did not. I asked him if he understood these  
5 rights.

6 Q. Okay. And so I'm assuming then that you also didn't  
7 ever ask him if he wanted a lawyer?

8 A. No, I did not. I just asked him if he understood  
9 these rights.

10 Q. And is that done -- do you go through each one  
11 individually and check it off and then have him -- have him  
12 initial it, or is it one of those things that you read it  
13 all, you check them all off, and then hand them to him?

14 A. My policy is, and I have no reason to believe that I  
15 did not do this, normally I will read the rights one at a  
16 time and then I will say, do you understand these rights as  
17 read. And then when I get completely through, that's when  
18 they initial that they've been read their rights and that  
19 they -- and -- as read, and then they get a copy of this.

20 Q. Okay. I guess what I'm asking is, do you go through  
21 and say Number 1, and read Number 1, and then say do you  
22 understand that right as read?

23 A. As a policy, I do.

24 Q. Okay.

25 A. And I have no reason to believe that I did not.



1 Q. But the initials don't come to the very end when  
2 he's signing it --

3 A. That's correct.

4 Q. -- and then also initial them?

5 A. That's correct.

6 Q. I want to talk to you a little bit about -- about  
7 his demeanor that day. You said when you were talking  
8 about -- when he was responding to you in the -- when you  
9 were explaining his warrants -- warnings to him, that he was  
10 very quiet?

11 A. He was quiet.

12 Q. Okay. So am I assuming that he wasn't laughing or  
13 joyful in any way?

14 A. He was just quiet.

15 Q. Okay. Do you remember him smiling or taking things  
16 lightly?

17 A. No, I do not.

18 Q. You also described him as being sleepy. What --  
19 what indicated to you that you thought that he kind of looked  
20 sleepy?

21 A. I think I said he appeared sleepy.

22 Q. Uh-huh.

23 A. Just a kid, like he had just been woke up.

24 Q. Okay.

25 A. Perhaps.

1 Q. Kind of still had -- kind of had that look about you  
2 when you first wake up?

3 A. Quiet.

4 Q. Okay. Were his eyes droopy or were they open?

5 A. He was looking at me.

6 Q. Okay. But he was calm. That was your testimony?

7 A. He was quiet.

8 Q. Okay. Did -- now, the time on both of these sheets,  
9 you said that you did these separately and apart from each  
10 other; is that correct?

11 A. I did, but they were together, and I used the same  
12 time for the arraignment procedures.

13 Q. Okay. That's exactly what I'm asking. So -- so  
14 that's an approximate time although one may be at 5:02 and  
15 one may be at 5:01?

16 A. That's correct.

17 Q. Okay. Did Mr. Murphy ever make any sort of request  
18 from you that he was hungry or he was tired or needed to go  
19 to the bathroom or anything like that?

20 A. No, he did not.

21 Q. Let me also ask you a little bit -- now, you talked  
22 to Ms. Miller about that you recognize the smell of alcohol,  
23 but I don't ever think that she ever asked you the question:  
24 Did he actually smell like alcohol?

25 A. No, he did not.

1 Q. Did he ever smell like marijuana?

2 A. I'm not an expert, but I don't think so. I have  
3 smelled marijuana smell on people before, and I did not smell  
4 that odor.

5 Q. Okay. Did you smell that, as you described it, the  
6 stale smell sometimes that comes off of people from having  
7 alcohol --

8 A. No.

9 Q. -- on or about their person?

10 A. No, I did not.

11 Q. Okay. About how long total do you think that you  
12 spent with Mr. Murphy?

13 A. Just a brief period of time because as soon as we  
14 got through with the magistrate procedures there at the  
15 Edgewood Police Department, I was then taken on out to the  
16 inquest site.

17 Q. So do you have kind of a ball park?

18 A. Probably no more than -- I don't know, maybe 10  
19 minutes, 15 at the most.

20 MS. BALIDO: Judge, I'll pass the witness.

21 MS. MILLER: The State has no further  
22 questions, Your Honor.

23 THE COURT: May this witness be excused,  
24 subject to recall, should such be necessary?

25 MS. BALIDO: No objection.

1 MS. MILLER: No objection from the State, Your  
2 Honor.

3 THE COURT: You are excused.

4 (Witness excused from courtroom.)

5 MR. DAVIS: May we approach the bench for just  
6 a moment?

7 THE COURT: You may.

8 Sheriff, if you'd retire the jury, please.

9 Ladies and gentlemen, there is a witness en route,  
10 been en route for a while. We thought he'd be here by now.  
11 As soon as he gets here, we'll proceed.

12 Let the record reflect the jury is being excused  
13 from the courtroom at this time.

14 (Jury excused from courtroom.)

15 THE COURT: Mr. Murphy, you may be excused in  
16 the company of the bailiff.

17 Ladies and gentlemen in the gallery, you may be  
18 seated or excused.

19 (Recess taken.)

20 THE COURT: Is Mr. Byck available? Here he  
21 is.

22 Let the record reflect this hearing is being  
23 conducted in open court, outside the presence and hearing of  
24 the impaneled jury.

25 Good morning. Ask you to raise your right hand,

1 please.

2 THE WITNESS: Yes, sir.

3 (Witness sworn.)

4 JASON BONHAM

5 was called as a witness by the Defendant and, after having  
6 been first duly sworn, testified as follows:

7 Direct Examination

8 By Ms. Balido:

9 Q. Could you please state your name for the record?

10 A. Jason Bonham.

11 Q. And, Jason, in October of 1990, you were a police  
12 officer with the City of Edgewood; is that correct?

13 A. Yes, ma'am.

14 Q. Okay.

15 THE DEFENDANT: You said '90.

16 MS. BALIDO: I'm sorry.

17 THE DEFENDANT: 2000.

18 Q. (By Ms. Balido) I'm sorry. In the year of 2000.

19 A. Yes, ma'am.

20 Q. In October of 2000 you were a police officer?

21 A. Yes, ma'am.

22 Q. With the City of Edgewood?

23 A. Yes, ma'am.

24 Q. Okay. And were you on duty the night of October the  
25 5th --

1 A. Yes.

2 Q. -- 5th, the year 2000?

3 A. If that's the night we're in question in here, no,  
4 ma'am, I was not.

5 Q. Okay. So you were off duty, but you were still a  
6 member of the police department?

7 A. Yes, ma'am.

8 Q. I don't want to get into basically what all came  
9 about. I just want to focus specifically at this point on  
10 when you actually went into the house.

11 A. Okay.

12 Q. Okay. Were you part of the --

13 THE COURT: This is the house of Ora Mae  
14 Milton?

15 THE WITNESS: Yes, sir.

16 MS. BALIDO: Thank you, Judge.

17 Q. (By Ms. Balido) And were you part of the arrest  
18 team that initially or first walked into Ora Mae Milton's  
19 house to arrest Jim Murphy?

20 A. No, ma'am.

21 Q. Okay. You were part of the perimeter team or the  
22 back door team sort of?

23 A. Yes, ma'am.

24 Q. Were you part of the group of officers that walked  
25 into the bedroom where Jim Murphy was located, that first

1 group of officers?

2 A. No, ma'am.

3 Q. Okay. Where were you when that occurred, if you  
4 know?

5 A. I was on the outside of the house.

6 Q. Okay. And when was it that you actually walked into  
7 the house or into the bedroom?

8 A. Me and some other officers were standing out  
9 front -- out front of Ora Mae's house. Chief Deputy at the  
10 time Gary Rose came out and some other officers were with  
11 him, said that he couldn't get a whole lot -- whole lot of  
12 communication going on with Jim and asked me if I went to  
13 school with him and I said, yes. He asked me if I could go  
14 talk to him.

15 Q. And so you -- that was when you decided to go inside  
16 the house?

17 A. Yes, ma'am.

18 Q. And you actually walked into the bedroom where Jim  
19 was located?

20 A. Yes, ma'am.

21 Q. And were you the only person in the room with Jim at  
22 the time, or were there other officers there?

23 A. At the time when we actually got down to talking  
24 about it?

25 Q. Yes.

1           A.    There was another officer there -- at first I walked  
2   in by myself and another officer came in a couple of minutes  
3   later.

4           Q.    Did you ever Mirandize Jim Murphy that night?

5           A.    No, ma'am.

6           Q.    Okay. Did you ever hear anybody read him his  
7   rights?

8           A.    No, ma'am.

9           Q.    Okay. So before you -- before you started asking  
10   him questions and you went in there with the intent to ask  
11   him questions about -- about the credit cards and also about  
12   what other officers had told you in regard to the suspicion  
13   of his -- his involvement in the disappearance of Ms.  
14   Cunningham?

15          A.    The disappearance of Ms. Cunningham was my primary  
16   reason for talking to him.

17          Q.    Okay. And before you asked him questions, you did  
18   not Mirandize him?

19          A.    I did not.

20          Q.    And you did not give him his 38.22 warnings?

21          A.    I did not give him any warnings.

22          Q.    Okay. Did he ever tell you that he had been given  
23   his warnings and he wished to waive those warnings or wished  
24   to give up his rights under Miranda and talk to you about it?

25          A.    He did not.



1 Q. Okay. So you just basically talked to him about  
2 what had happened without any sort of talk about warnings at  
3 all?

4 A. Yes, ma'am.

5 Q. Okay.

6 THE COURT: Were you in uniform or plain  
7 clothes at the time?

8 THE WITNESS: I was in an off duty uniform,  
9 generic. I was working an off duty security job in Dallas.

10 THE COURT: All right.

11 Q. (By Ms. Balido) But it wasn't your Edgewood  
12 uniform?

13 A. No, ma'am.

14 Q. So were you sent in there by Gary Rose?

15 A. I wasn't sent.

16 Q. Okay. But you volunteered to go in there --

17 A. Yes.

18 Q. -- and ask him questions?

19 A. Yes.

20 Q. Because you thought the defendant would talk to you  
21 because y'all were friends?

22 A. I felt comfortable.

23 Q. Okay.

24 THE COURT: What was the nature of your past  
25 relationship with the defendant? You said you went to school

1 together?

2 THE WITNESS: Yes, sir, we were --

3 THE COURT: What grades?

4 THE WITNESS: Seven through high school. 7th  
5 grade through high school.

6 THE COURT: Middle school or junior high all  
7 the way through high school?

8 THE WITNESS: Yes, sir.

9 THE COURT: Graduated same class?

10 THE WITNESS: No, sir, I didn't graduate. I  
11 dropped out in the 10th grade and he went on, I believe, to  
12 graduate.

13 THE WITNESS: All right.

14 MS. BALIDO: Judge, we'll pass the witness.

15 MR. DAVIS: I've got no questions for the  
16 purpose of this hearing.

17 THE COURT: Thank you. You may step down,  
18 sir.

19 THE WITNESS: Yes, sir.

20 MR. DAVIS: The State's ready to call Deputy  
21 Gary Rose.

22 MS. BALIDO: Judge, for the purposes of this  
23 hearing, we would call for the limited purposes of this  
24 hearing Jedidiah Murphy.

25 THE COURT: Would you rise, please, raise your

1 right hand.

2 (Defendant sworn.)

3 MS. LITTLE: Do you want him to sit here or  
4 testify from here?

5 THE COURT: You can have him come up here.

6 (Defendant takes the stand.)

7 THE COURT: As soon as we complete the  
8 examination of this witness, I've been informed by the  
9 bailiff that the catered lunch has arrived so we will break  
10 for lunch after this.

11 MR. DAVIS: Until 1:30?

12 THE COURT: Pardon me?

13 MR. DAVIS: Until 1:30?

14 THE COURT: Until 1:30.

15 This witness is being called for the limited purpose  
16 of the matter with regard to the Miranda warnings, the  
17 morning in question.

18 MS. BALIDO: Yes, Judge, by the Miranda  
19 warnings by Gary Rose in relationship to the oral --

20 THE COURT: The examination by both sides will  
21 be limited to that issue.

22 MR. DAVIS: This is -- as I understand, this  
23 hearing is for the purpose of exploring the voluntariness?

24 THE COURT: Correct.

25 MR. DAVIS: Okay. Thank you.

1 JEDIDIAH ISAAC MURPHY

2 the defendant, was called as a witness in his own behalf and,  
3 after having been first duly sworn, testified as follows:

4 Direct Examination

5 By Ms. Balido:

6 Q. Can you please state your name for the record?

7 A. Jedidiah Isaac Murphy.

8 Q. And, Mr. Murphy, you are the man that stands accused  
9 of capital murder in this case?

10 A. Yes, ma'am.

11 Q. I want to direct your attention to the early morning  
12 hours of October the 5th, the year 2000. You were -- you  
13 were inside Ora Mae Milton's house at that time, the early  
14 morning hours; is that correct?

15 A. Yes, ma'am.

16 Q. And can you tell us what's the -- well, before the  
17 police came into the room, were you asleep or were you awake?

18 A. Asleep.

19 Q. Okay. And when you say asleep, how long do you  
20 think you had been asleep?

21 A. A couple of hours.

22 Q. Okay. And was it a deep sleep, a light sleep, or  
23 can you recall?

24 A. It was a passed out sleep.

25 Q. Okay. You say it's a passed out sleep because what

1 had you been doing prior --

2 A. We had been drinking all night.

3 Q. Okay.

4 A. Smoking marijuana. We were both pretty hammered.

5 Q. And when you say you were both pretty hammered, that  
6 was referring to Treshod Tarrant?

7 A. Yes, ma'am.

8 Q. Okay. And so I don't want to really focus on  
9 Treshod. I want to talk about you and your mental state at  
10 the time.

11 You had been drinking all day; is that correct?

12 A. Yes, ma'am.

13 Q. Would you state that you were intoxicated at the  
14 time that you went to sleep?

15 A. Yes, ma'am.

16 Q. Had you been ingesting marijuana prior to going to  
17 sleep?

18 A. Yes, ma'am.

19 Q. What is the first thing you recall about the police  
20 coming in that morning?

21 A. Them flipping me over. I was laying on my stomach,  
22 and they flipped me -- no, I was laying on my back, and they  
23 flipped me over on my stomach to put the handcuffs on me.

24 Q. Okay. Do you remember them saying that -- do you  
25 remember anybody saying that you were under arrest?

1 A. No, ma'am.

2 Q. Do you remember anybody saying that you had any  
3 rights under the law at all?

4 A. No, ma'am.

5 Q. You just remember people coming in, flipping over,  
6 and then putting the handcuffs on you?

7 A. Yes, ma'am.

8 Q. What is the first thing you remember being said to  
9 you?

10 A. Well, they sit me up, and I was laying on my  
11 stomach. They sit me up on the edge of the bed. Deputy Rose  
12 asked me where she was.

13 Q. Okay. Where is she?

14 A. Where is she?

15 Q. Okay. At any point did Deputy Rose read you any  
16 Miranda warnings?

17 A. Absolutely not.

18 Q. That you recall?

19 A. No, ma'am.

20 Q. Okay. Were you in such a -- well, did you ever tell  
21 Deputy Rose that you understood any warnings?

22 A. No, ma'am.

23 Q. Or you understood what your rights were?

24 A. No, ma'am.

25 Q. Did you ever tell Deputy Rose that you wanted to

1 waive your rights and make statements regarding the location  
2 of Ms. Cunningham or anything that had to do with Ms.  
3 Cunningham?

4 A. No, ma'am.

5 (Defense counsel confer with one another.)

6 Q. (By Ms. Balido) At some point did Deputy Rose leave  
7 the room?

8 A. Yes, ma'am.

9 Q. Okay. And Jason Bonham came in; is that correct?

10 A. Yes, ma'am.

11 Q. Okay. And did he ever read you any rights?

12 A. No, ma'am.

13 Q. Did you ever tell him that you wanted to waive your  
14 rights under the law and -- and make a statement of any kind?

15 A. No, ma'am.

16 Q. Okay. Did the other man that came in with Jason  
17 read you any rights?

18 A. No, ma'am.

19 Q. Any -- anyone in the bedroom, any officer that may  
20 have come into the bedroom, ever read you any rights  
21 regarding you had the right to remain silent and your Miranda  
22 warnings?

23 A. No, ma'am.

24 Q. And you never told any of those officers that you  
25 wanted to give up those rights?

1 A. No, ma'am.

2 Q. Okay. Do you remember anything about asking any  
3 questions to the officers about requesting to get dressed or  
4 go to the bathroom or anything like that?

5 A. No, ma'am.

6 Q. Okay.

7 A. I was already dressed.

8 Q. Okay. How long was -- if you can estimate, do you  
9 know how long Deputy Rose was in the room with you before  
10 Jason came in?

11 A. Not very long at all, 5 minutes, 3 minutes. Just  
12 long enough to ask me where she was and he went out and got  
13 Jason and it kind of startled me because I ain't seen him in  
14 a long time.

15 Q. Seeing Jason startled you some?

16 A. Yeah.

17 Q. Can you tell me in your mind, Jim, when were you  
18 first kind of aware of what was going on around you that  
19 morning? I mean, you know, you were flipped over and you --  
20 and handcuffed and that kind of deal. Did it take you awhile  
21 to clear your head, or what was the situation?

22 A. I couldn't -- I don't know -- I don't know really  
23 what it was. I didn't really come to until I started talking  
24 to Jason.

25 Q. Okay.



1 A. I was sleepy and full of alcohol, so --

2 Q. Okay.

3 A. I wasn't very conscious.

4 Q. Okay. And so is it fair to say that you weren't  
5 thinking very clearly at that point?

6 A. Not at all.

7 Q. Okay. Were you thinking clearly enough at that  
8 point to understand the ramifications of what you were doing?

9 A. No, ma'am.

10 Q. Okay. But --

11 A. I remember when Detective Rose came in there, but --  
12 and I remember what he said, but as far as me comprehending  
13 everything that was going on around me, I didn't do that.

14 Q. Okay.

15 MS. BALIDO: I'll pass the witness at this  
16 time, Judge.

17 Cross-Examination

18 By Mr. Davis:

19 Q. You seemed to remember how long you had been asleep  
20 that morning, correct?

21 A. Roughly two hours, I believe.

22 Q. So you remember that?

23 A. Somewhat, yes, sir.

24 Q. You remember the position that you were asleep when  
25 the officers came into the room, right?

1 A. Where -- as to where my head was?

2 Q. No, sir, the fact that you were sleeping on your  
3 back. You remember that today, don't you?

4 A. I remember because they flipped me over.

5 Q. And you remember being flipped over on your stomach,  
6 correct?

7 A. Yes, sir.

8 Q. You remember being handcuffed, right?

9 A. Yes, sir.

10 Q. You don't have any -- any problem remembering this  
11 morning that they told you that you were under arrest. You  
12 remember that, don't you?

13 A. Do what, now?

14 Q. You remember one of those officers that morning  
15 telling you that you were under arrest?

16 A. Later on in the morning, yes, I did. I took that as  
17 a given when the handcuffs hit me.

18 Q. So you understood the impact of having those  
19 handcuffs put on your wrist, didn't you?

20 A. Why sure.

21 Q. Is that a yes?

22 A. Why sure, yes, sir.

23 Q. You seem to have a very clear memory that they did  
24 not read you any Miranda warning. You sure about that?

25 A. I know exactly the first thing that came out of his

1 mouth. I am sure of that.

2 Q. So you were clear headed enough at that point to  
3 know the very first thing that Deputy Rose said to you that  
4 morning, correct?

5 A. That is correct.

6 Q. You remember the first thing he said was "where is  
7 she." You sure about that?

8 A. Yes, I am.

9 Q. No problem remembering it?

10 A. No, sir.

11 Q. What did you say in return?

12 A. I don't remember.

13 Q. You don't remember?

14 A. Not exactly.

15 Q. Well, give me your best shot. What did you say?

16 MS. BALIDO: Judge, asked and answered. He  
17 said he didn't remember.

18 THE COURT: Overruled.

19 Q. (By Mr. Davis) Tell me what you remember.

20 A. I remember him asking where she was, where she was,  
21 and I remember saying something about the trunk of the car.

22 Q. So as you sit here this morning, you now remember  
23 that you said something about the trunk of the car?

24 A. Well, that and listening to his testimony. I put  
25 two and two together.

1 Q. So that jogged whatever memory that you had, right?

2 A. A little bit, yes, it did.

3 Q. What else do you remember Deputy Rose saying to you?

4 A. I don't really remember him saying much else to me.

5 Q. Did he say anything else to you?

6 A. I can't answer that definitely, no.

7 Q. Well, does that mean that you don't remember or that  
8 it's possible he may have said or that he said -- wait until  
9 I finish the question. Or that he said something, but that  
10 you just can't remember exactly what it was?

11 A. There were quite a few people in the room, so I  
12 couldn't tell exactly who was saying what at the time.

13 Q. So as Deputy Rose is initially up there with you,  
14 you remember that other people were in the room with him,  
15 right?

16 A. They were all over me. I couldn't help but remember  
17 that.

18 Q. And you remember, don't you, that they were law  
19 enforcement officers; is that correct?

20 A. Well, yes, sir.

21 Q. Were they also talking?

22 A. I believe so.

23 Q. You remember that?

24 A. Well, yes, sir.

25 Q. And all of this is happening before Jason Bonham

1 ever came in the room, right?

2 A. I didn't realize he wasn't in the room. I didn't  
3 know that.

4 Q. Well, this is all before Jason Bonham actually  
5 started talking with you, right?

6 A. It is, yes, sir.

7 Q. So that as I recall when he asked you where is she,  
8 you said something about the trunk. You understood the  
9 question that was being asked of you, didn't you?

10 A. When he said where is Ms. Cunningham?

11 Q. Yes, sir.

12 A. Yeah, I knew what he was asking.

13 Q. You didn't have any problems? There was no  
14 miscommunication. You understood what he was asking of you,  
15 correct?

16 A. Well, I was a little in and out of it. I was  
17 intoxicated, so I really couldn't comprehend all that was  
18 going on around me.

19 Q. You responded --

20 A. I did the best I could.

21 Q. You responded to that question, didn't you?

22 A. I did respond to that question.

23 Q. And you gave them a location, didn't you?

24 A. To the best of my ability, I believe I did.

25 Q. How much marijuana did you smoke that day?

1       A.    Between -- I don't even know how many people there  
2       were.  There were probably four or five of us.  We smoked  
3       probably three or four joints.

4       Q.    Each person?

5       A.    No, no, they just passed them around.

6       Q.    Who were they?

7       A.    I don't know any one of Shod's friends.  I don't  
8       know their names.  I didn't know them.  I knew Shod.  These  
9       were Shod's friends.

10      Q.    Where did you smoke the pot?

11      A.    At the apartment.  One of them had an apartment.  We  
12      were at his apartment.

13      Q.    Do you remember that?

14      A.    His girlfriend.

15      Q.    You remember that?

16      A.    When we were at his apartment?

17      Q.    Yes, sir.

18      A.    Yes, sir.

19      Q.    So you -- that actually had occurred before you were  
20      ever awakened by Deputy Rose, didn't it?

21      A.    Yeah.

22      Q.    You have a memory of that today, don't you?

23      A.    Yeah, I was still drinking.

24      Q.    You remember the number of joints that y'all passed  
25      around when you were smoking pot?

1 A. Because Shod was rolling the marijuana right beside  
2 me.

3 Q. What time did that occur?

4 A. Now, that's something I couldn't tell you.

5 Q. Sometime in the evening?

6 A. Late evening.

7 Q. Is that after you ate in Terrell?

8 A. I didn't eat anything.

9 Q. Well, is that after the two of you went to the Cole  
10 Mountain restaurant, let me rephrase it that way?

11 A. Yes, it is. Yes, it is.

12 Q. Is that the only marijuana that you smoked that day?

13 A. Yes, it is.

14 Q. You said you were drinking all day. What's the  
15 first time that you had anything to drink on October the 5th?

16 A. As far as -- well, I drank -- I started drinking --  
17 you want to know what time I started drinking?

18 Q. That's my question.

19 A. October 5th was the day I was arrested, was it not?

20 Q. No, sir, October 6th actually about 3:00 in the  
21 morning.

22 A. Well, October 4th and the 5th -- I started drinking  
23 on the 4th at my sister Tonya's house, drank everything she  
24 had in the bar and a bottle of champagne.

25 Q. Let's just stop right there. What all did she have

1 in the bar that you drank then on the 4th?

2 A. Tequila.

3 Q. How much?

4 A. There was about that much in the bottle, so I --

5 Q. Holding up your fingers, what about an inch and a  
6 half --

7 A. About an inch and a half.

8 Q. So you drank Tequila. What else did you drink at  
9 Tonya's house on the 4th?

10 A. She had some Gilbey's gin.

11 Q. How much of that did you drink?

12 A. About the same amount. About the same amount.

13 Q. What else did you drink?

14 A. Champagne.

15 Q. How much?

16 A. A whole bottle.

17 Q. All right. What time did that occur on October the  
18 4th?

19 A. Sir, I can't tell you an exact time. I couldn't --

20 Q. Morning, afternoon, or night?

21 A. Just before noon. Right at noon.

22 Q. When is the next time that you had anything to  
23 drink?

24 A. When I went to Bleachers.

25 Q. What did you have to drink?



1 A. Two Jagermeisters. I thought it was more, but he  
2 said two.

3 Q. You thought it was more. How much did you think --

4 A. I thought it was more than two shots.

5 Q. How much did you think it was?

6 A. More like four.

7 Q. You now recall that it was two?

8 A. Well, I'm going with what he said.

9 Q. Two shots of Jagermeister at Bleachers. What time  
10 did that occur?

11 A. I don't have that answer either. I don't know.

12 Q. Afternoon?

13 A. Afternoon, I guess that would be about right.

14 Q. What's the next time that you had anything to drink  
15 on the 4th?

16 A. When I went and bought some beer at the Racetrac or  
17 past George Bush Highway. I think it was a Racetrac.

18 Q. When did that occur?

19 A. I don't know the time. It was after I had the car.

20 Q. After you had Ms. Cunningham's car?

21 A. Yes, sir.

22 Q. Ryan Hammonds or Zach Mamot or Ashley Johnson with  
23 you by that time, or had you not met them yet?

24 A. I think they all three were with me.

25 Q. What did you buy at the Racetrac?

1 A. Some beer.

2 Q. How much?

3 A. I don't know if it was a 6 or 12-pack. I can't  
4 remember that either.

5 Q. When did you consume it?

6 A. Well, I was consuming it at the time. I was just  
7 drinking it as I was going.

8 Q. How much of it did you drink?

9 A. Every bit of it.

10 Q. Sir?

11 A. Every bit of it.

12 Q. While these kids were with you?

13 A. Not -- I didn't drink all of it while they were with  
14 me, but I did consume it all.

15 Q. How much did you drink while the kids were with you?

16 A. Probably about five.

17 Q. When did you finish it off then?

18 A. Later that evening.

19 Q. Like when?

20 A. Just -- just continued to drink after I dropped them  
21 all off.

22 Q. Did you consume it before you got to Shawn Cruz's  
23 house?

24 A. Yes, I did.

25 Q. Did you have anything -- well, did you purchase any

1 other alcoholic beverage before you got to Shawn Cruz's house  
2 that night?

3 A. I cannot remember.

4 Q. Did you -- all right. After you left Shawn Cruz's,  
5 when is the next time you purchased any alcoholic beverages?

6 A. I don't remember if it was that night or the next  
7 day.

8 Q. What did you purchase next?

9 A. Oh, it would have been beer.

10 Q. How are you sure of that?

11 A. Because that's -- I got to where I quit drinking  
12 liquor so much, but just every now and then because of my  
13 stomach. I got a bad problem with an ulcer.

14 Q. Where do you remember buying beer next on the 5th  
15 now?

16 A. A.P.'s. A.P.'s.

17 Q. Where is that?

18 A. Terrell, Texas.

19 Q. Where is that located in Terrell?

20 A. Off -- it's off 20. I don't know. It's one of the  
21 exits off 20. I can't remember what road it's on.

22 Q. When did you buy that?

23 A. I don't have -- I don't remember the time either.

24 Q. Well, was that before you got down to Shod's house  
25 to visit with him?

1 A. Yes, sir, it was.

2 Q. How much did you buy at A.P.'s?

3 A. I believe it was an 18-pack.

4 Q. How much of it did you consume before you got down  
5 to Shod's house?

6 A. Probably about 14. I had a few of them left.

7 Q. When you got to Shod's?

8 A. Yes, sir.

9 Q. Did you purchase any other alcoholic beverages  
10 before you got to Shod's besides the 18-pack?

11 A. I don't believe so.

12 Q. Once you got to Shod's, how much more alcoholic  
13 beverage did you -- did you purchase on the 5th?

14 A. We went and got the two 18-packs and that bottle of  
15 Cognac Hennessy.

16 Q. And prior to the time that Deputy Rose came into  
17 your room that morning, how much of the two 18-packs had you  
18 consumed?

19 A. Oh, I couldn't even imagine. I have no idea. No  
20 idea. Not even a clue.

21 Q. So you got no clue as to how many of those?

22 A. None at all.

23 Q. The Hennessy, how much of that did you drink?

24 A. We were just passing it around. I don't know  
25 exactly how much. I could say it was mine, so I would say

1 shot wise probably 15 shots.

2 Q. Now, that Hennessy, that's liquor that you tried to  
3 stay away from --

4 A. It is -- yes, it is.

5 Q. Because of your stomach, right?

6 A. Yes, it is. Exactly.

7 Q. Did you have anymore alcoholic beverage once you got  
8 back to Shod's house before you went to bed?

9 A. Back from smoking marijuana and drinking?

10 Q. Right. The last time that you actually got back to  
11 Ms. Milton's house?

12 A. I don't --

13 Q. Did you have anything there -- she let -- she let  
14 people drink in her house?

15 A. No way. Huh-uh.

16 Q. Back on the 4th, did you smoke any pot that day?

17 A. No, I did not.

18 Q. Did you take any sort of illegal controlled  
19 substance? I'm talking cocaine, heroin, speed, anything?

20 A. No, sir.

21 Q. How about on the 5th? Anything besides marijuana?

22 A. No, sir.

23 MR. DAVIS: I pass the witness, Your Honor.

24 MS. BALIDO: Judge, I just have a couple of  
25 more questions.

1

Redirect Examination

2

By Ms. Balido:

3

4

5

Q. Along with the alcohol that you drank at Tonya's house, were there any kind of prescription medications that you took over there as well?

6

A. No, not that I remember.

7

Q. Okay. So you don't remember taking any?

8

A. No, I don't believe I did.

9

10

Q. Either that morning before you left to go to Bleachers or the morning that you returned later on?

11

A. I don't believe I did.

12

Q. Okay.

13

MS. BALIDO: That's it, Judge.

14

Recross-Examination

15

By Mr. Davis:

16

17

Q. The Tequila, bottle of Tequila, did you finish that off?

18

A. The Tequila?

19

Q. At Tonya's?

20

A. I believe I did.

21

Q. Did you leave the bottle there?

22

A. Yes, I did.

23

24

Q. How about the Gilbey's -- Gilbey's gin? Did you finish that bottle off?

25

A. Yes. I believe I left it there, also.

1 Q. And finally the champagne that you finished off, did  
2 you leave the bottle there, too?

3 A. Yes.

4 MR. DAVIS: That's all I have, Judge.

5 THE COURT: You may step down, sir.

6 Either side care to offer any further evidence on  
7 the issue of the voluntariness of the alleged warnings?

8 MR. DAVIS: No, Your Honor.

9 MS. BALIDO: No, Your Honor.

10 THE COURT: Argument.

11 MS. BALIDO: Judge, I believe since it's our  
12 initial burden of production that the warnings were not  
13 given, it's up to the State to prove that they were given or  
14 that they were voluntarily waived, so we would reserve the  
15 right to close.

16 (Arguments on Voluntariness of Statement)

17 MR. DAVIS: Well, I'll just point out to the  
18 testimony of Deputy Gary Rose who has testified in open court  
19 that he did in fact give those warnings, that at no time did  
20 the defendant indicate he didn't understand the warnings or  
21 that he did not want to talk with him. There is no testimony  
22 from Jason Bonham to that effect either that this man -- the  
23 defendant has ever indicated that he didn't want to talk to  
24 law enforcement. In fact, the testimony will be before this  
25 jury that he did in fact voluntarily tell Officer Bonham

1 where the body was without any coercion or threats or  
2 promises. Again, I would point out that the defendant's  
3 testimony and contradictions there where he wants you to  
4 believe he didn't come to and didn't understand anything that  
5 was happening inside that room until Deputy Gary Rose got  
6 there when in fact he's able to remember in great detail  
7 where he was, what he was doing, positions that he was  
8 sleeping, how long he had been sleeping. And so I would  
9 simply say that his testimony on that matter is simply not  
10 credible.

11 THE COURT: Defense may conclude.

12 MS. BALIDO: Judge, we would agree with most  
13 of what the State said as to what the testimony was, and  
14 that's exactly the point. The state of the testimony is that  
15 Gary Rose said that he gave the warnings, however he never  
16 said that there was any indication from the defendant that he  
17 understood those warnings and that he wished to waive those  
18 warnings. There is just know indication at all. There is  
19 nothing in the record that said that he did understand the  
20 warnings. There's nothing in the record that he understood  
21 the warnings and that he waived those warnings. There's just  
22 no indication at all in the record that the defendant did  
23 understand his Miranda warnings and therefore waived those  
24 Miranda warnings and decided to make oral statements to any  
25 one of the police officers he made oral statements to.



1 We would state that under 38.22, subsection A, no  
2 oral statement is admissible unless, number one, it was  
3 recorded; or, number two, that the -- their rights were given  
4 and waived; number three, that the recorder was capable of  
5 making such a recording; and, number four, all voices were  
6 I.D.ed. There is no recording in this case, and so we would  
7 say that it's on the burden of State to prove that the oral  
8 statement should be admissible. They can't do that through  
9 Moon -- based on the holding of Moon versus State without  
10 proving that the due process requirements of voluntariness  
11 and the requirements of Miranda were first met. And we would  
12 say that on the facts of this case and the record as  
13 developed through cross-examination of the defendant and the  
14 testimony of the officers that they have not met their  
15 burden.

16 So basically what we would say, Judge, is based on  
17 38.22 and the protections that are set out in subsection A of  
18 that section, that the statements be suppressed and that all  
19 evidence taken from those statements or brought in by -- or  
20 gained by the police, based on that statement, should be  
21 suppressed.

22 Additionally, we would say that the State has not  
23 shown that subsection C should apply in this case of 38.22,  
24 and therefore there has been no proof to this Court that  
25 those written statements should be brought in there, brought

1 into court as evidence. And we would say that under Moon  
2 versus State, under 38.22 of the Texas Code of Criminal  
3 Procedure, over Article 1, Section 10, 13, and 19 of the  
4 Texas Constitution and under the 5th, 6th, 8th, and 14th  
5 Amendments to the United States Constitution and the United  
6 States holding in -- in Miranda versus Arizona, in addition  
7 to the holdings in Jackson v. Denno, 378 U.S. 670 -- 368 --  
8 and most recently in Dickerson v. U.S. which is a U.S.  
9 Supreme Court holding upholding Miranda on June 26th, the  
10 year 2000, that court number -- the U.S. Court Number is  
11 99-5525 -- that these oral statements were not made after  
12 due process was served and after Miranda was given and  
13 therefore should be suppressed and not entered into evidence  
14 against the defendant for any purpose.

15 THE COURT: The Court --

16 MS. BALIDO: I'm sorry, Judge. We would like  
17 findings of facts and conclusions of law stated into the  
18 record or in written form to be included in the record of  
19 this case.

20 THE COURT: Based upon the hearing conducted  
21 in open court, outside the presence and hearing of the jury,  
22 with regard to whether or not the Miranda warnings were given  
23 by Deputy Gary Rose of the Van Zandt County Sheriff's  
24 Department and the issue of whether or not the mental  
25 condition of the accused, Jedidiah Isaac Murphy, was such if

1 given, he comprehended the import of the warnings, the Court  
2 makes the following determinations: Find as a matter of law  
3 that the deputy did in fact upon entering the bedroom which  
4 Mr. Chad Tarrant (sic) and the defendant, Jedidiah Isaac  
5 Murphy, were sleeping, that Deputy Rose did in fact give the  
6 defendant the Miranda warnings as is required by Miranda  
7 versus Arizona, 86 Supreme Court, page 1602. I further find  
8 the testimony of the defendant as relates to his ingestion  
9 prior to having received the warnings with regard to the  
10 consumption of ethyl alcohol and cannabis was not such that  
11 his mind was so altered that he did not and could not  
12 understand the importance and significance of the warnings  
13 being given to him by Deputy Rose.

14 I find therefore as a matter of law due process,  
15 contrary to the contentions of the defense, have been  
16 followed with regard to the matters and the evidence supplied  
17 by Jedidiah Isaac Murphy subsequent to the warnings will be  
18 admitted before the jury should the State's strategy so ask  
19 those questions of the jury.

20 The record further reflect the defense has a  
21 continuing objection to this and will not need to make  
22 additional objections in front of the jury should this line  
23 or testimony be offered once the jury has returned to the  
24 court.

25 MS. BALIDO: Judge, in that regard we would

1 also like to request at this point that the -- that the Court  
2 include in its jury charge to the jury an instruction  
3 regarding this portion of the statements of the defendant.

4 THE COURT: As is required by the Code of  
5 Criminal Procedure, that request will be granted.

6 MS. BALIDO: Nothing further, Judge.

7 THE COURT: Stand in recess for lunch. The  
8 jury is eating. I understand those of you that ordered  
9 lunch, it's here as well. We will -- off the record for  
10 scheduling purposes.

11 (Recess of proceedings.)

12 THE BAILIFF: All rise.

13 THE COURT: Let the record reflect the jury is  
14 returning to the courtroom at this time.

15 (Jury returned to courtroom.)

16 THE COURT: Jurors may be seated.

17 Mr. Murphy, counsel, visitors in the gallery, you  
18 may be seated.

19 Counsel may continue.

20 MR. DAVIS: Thank you.

21

22

23 (No omissions.)

24

25

GARY ROSE

was called as a witness by the State and, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Davis:

Q. Just for the record, you're the same Deputy Gary Rose who was testifying yesterday afternoon when we concluded testimony; is that right?

A. Yes, sir.

Q. All right. Deputy Rose, I believe that at the time that we concluded yesterday you had told us that you had gone inside the home of Ora Mae Milton and had actually gone into a bedroom where Shod Tarrant and the defendant, Jedidiah Murphy, were sleeping; is that right?

A. Yes, sir.

Q. And I believe the last question I asked you at the time was: Were you the first person who had any actual contact with the defendant?

A. Yes, sir.

Q. And you were in fact the first person; is that right?

A. Yes, sir.

Q. Now, can you tell the members of the jury what happened when you went over to the bed where the defendant was? First of all, was he still sleeping?

1 A. Yes, sir, he was asleep.

2 Q. All right. So what did you do at that point?

3 A. At that point we woke him up and restrained him,  
4 placed him in handcuffs, and set him up in the bed.

5 Q. Now, Shod Tarrant, was he still in his own bed?

6 A. Yes, sir.

7 Q. And had you given any instructions to the officers  
8 what they should do with Shod?

9 A. No, sir, not at that point.

10 Q. All right. So you handcuffed the defendant, you sat  
11 him up in bed, and then what is the next thing that you did?

12 A. I read him his Miranda rights.

13 Q. Now, when you say that you gave him his Miranda  
14 warnings or his Miranda rights, are these warnings and rights  
15 that you've given on several different occasions during your  
16 career?

17 A. Yes, sir.

18 Q. When you give the rights, do you have a little three  
19 by five card or a small business card that have those written  
20 where you read the warnings to him, or do you give the  
21 warnings by memory?

22 A. If I was at the office, I would have the card, but I  
23 didn't have a card with me, so I did it by memory.

24 Q. All right. Would you please now turn to the jury  
25 and tell them the warnings that you gave to the defendant

1 that morning on October the 6th?

2 A. You have the right to remain silent and not make any  
3 statement. Any statement you make can and will be used  
4 against you at your trial. Any statement you make can and  
5 will be used as evidence against you in court. You have the  
6 right to have an attorney present to advise you prior to and  
7 during any questioning. If you are unable to employ a  
8 lawyer, you have the right to have one appointed to advise  
9 you prior to and during any questioning. You have the right  
10 to terminate any interview or questioning at any time.

11 Q. All right. Now, while you were giving these rights  
12 or warnings to the defendant, was he looking at you?

13 A. Yes, sir.

14 Q. Did he appear to be listening to you?

15 A. Yes, sir.

16 . Q. All right. When you concluded giving him his  
17 warnings, did he tell you that he didn't understand the  
18 warnings or that he wanted you to leave or that he wasn't  
19 going to talk to you?

20 A. No, sir.

21 Q. Did he interrupt you while you were giving him his  
22 warnings?

23 A. No, sir.

24 Q. Was there anything that led you to believe that he  
25 did not understand his warnings or that he wanted to somehow

1 invoke the rights to an attorney or to terminate the  
2 interview?

3 A. No, sir.

4 Q. How close to the defendant were you at that time,  
5 Deputy?

6 A. I was probably within a foot, foot and a half in  
7 front of him.

8 Q. And I believe you told us he was looking -- his eyes  
9 were open?

10 A. Yes, sir.

11 Q. Did he appear to be intoxicated during the time that  
12 you were talking with him?

13 A. No, sir.

14 Q. Did he appear to be under the influence of any  
15 drugs?

16 A. Not that I could tell.

17 Q. Did he evidence any sign whatsoever of any mental  
18 illness or mental impairment during the time that you were  
19 talking with him there in the bedroom?

20 A. No, sir.

21 Q. Did you believe at that time that he had understood  
22 his Miranda rights?

23 A. Yes, sir.

24 Q. Now, without going into the contents of the  
25 conversation, did you begin to have a conversation with the



1 defendant?

2 A. Yes, sir.

3 Q. And did you ask him a question or questions during  
4 this conversation?

5 A. Yes, sir.

6 Q. Now, during this conversation, again did he appear  
7 to understand what you were saying to him?

8 A. Yes, sir.

9 Q. At some points did he respond to you?

10 A. Yes, sir.

11 Q. Without making a judgment about whether his  
12 responses were truthful or not truthful, did his responses  
13 appear to be appropriate to what you had said to him?

14 A. Yes, sir.

15 Q. How long did you stay with the defendant in the  
16 bedroom?

17 A. I would say approximately 5 or 6 minutes.

18 Q. Uh-huh. During that time other -- other law  
19 enforcement officers there with you?

20 A. Yes, sir.

21 Q. And to back it up, when you went into the bedroom,  
22 you had your gun drawn, didn't you?

23 A. Yes, sir.

24 Q. Is that normal procedure if you're going in on this  
25 type of an arrest?

1 A. Yes, sir.

2 Q. Is that done for -- for what purpose? Your safety?

3 A. Yes, sir.

4 Q. So you stayed in there 4 or 5 minutes. Did the  
5 defendant leave the bedroom with you, or did he remain in  
6 there?

7 A. He remained in the bedroom.

8 Q. And where, if anywhere, did you go at that point?

9 A. At that point I went outside the front.

10 Q. All right. Where did you go to?

11 A. To where the car was.

12 Q. Would this be the silver Honda that you had seen out  
13 front?

14 A. Yes, sir.

15 Q. And what did you do when you got to the Honda?

16 A. I opened the trunk of the car.

17 Q. Had you seen anything on the outside that led you to  
18 open the trunk?

19 A. Yes, sir.

20 Q. What was that?

21 A. Blood.

22 Q. Blood?

23 A. (Witness nods head.)

24 Q. Where on the -- where on the car exactly did you see  
25 this blood?

1 A. On the rear bumper.

2 Q. So you opened up the trunk; is that right?

3 A. Yes, sir.

4 Q. And tell the members of the jury what was the  
5 appearance of the inside portion of the trunk when you popped  
6 the latch?

7 A. There was numerous items, looked like clothing  
8 scattered throughout the back end.

9 Q. All right. And what about smell? Anything unusual  
10 there?

11 A. Very pungent odor.

12 Q. Have you had occasion in the past to smell items  
13 that were bloody, perhaps had been left out in a heated  
14 condition or perhaps out in the elements?

15 A. Yes, sir.

16 Q. Now, the smell that you had coming from that trunk,  
17 was that consistent with that sort of smell that you had  
18 experienced before?

19 A. Yes, sir.

20 Q. Did you find a body inside the trunk?

21 A. No, sir.

22 Q. Are you familiar with an Officer Jason Bonham?

23 A. Yes, sir.

24 Q. Who is that -- who is Jason Bonham?

25 A. He was employed by the Edgewood Police Department at

1 that time.

2 Q. Was Jason Bonham there at the location?

3 A. Yes, sir.

4 Q. And while you were outside with the Honda, was he  
5 out there with you or was he somewhere else?

6 A. He was somewhere else.

7 Q. While you were outside, did you see Jason Bonham?

8 A. At one point, yes, sir.

9 Q. All right. Tell me about that. How did you come in  
10 contact with Jason Bonham?

11 A. After I had closed the trunk of the car, I was  
12 walking back towards the house. Jason met me outside --  
13 outside the front of the house.

14 Q. Did y'all have a conversation?

15 A. Yes, sir.

16 Q. What was the nature of that conversation?

17 MS. BALIDO: Objection, hearsay.

18 THE COURT: Overruled.

19 Q. (By Mr. Davis) You can go ahead and tell us.

20 A. Jason had told me that --

21 MS. BALIDO: Objection, hearsay.

22 THE COURT: Overruled.

23 A. Jason Bonham had told me that he had talked to  
24 Murphy, and Murphy had told him where the body was.

25 MS. BALIDO: Judge, we're going to object

1 to -- first as hearsay. Secondly, that we'd object that any  
2 statement taken by any police officer at the scene was in  
3 violation of Mr. Murphy's Miranda warnings against the United  
4 States Constitution, the -- the 5th, 6th, 8th, and 14th  
5 Amendments to the United States Constitutional, and Article  
6 1, Section 9, 10, 13, and 19 of the Texas Constitution, and  
7 Moon versus State.

8 THE COURT: The Court recalls all those  
9 objections having been made on repeated occasions this  
10 morning outside the jury's presence. I told the defense  
11 they'd have a continuing objection in the presence of the  
12 jury. I'm telling the jury that the State -- that the  
13 defense had a continuing objection. The Court again  
14 considers the defense objection. They're again overruled.

15 Q. (By Mr. Davis) Sir, I'm sorry, I couldn't hear your  
16 complete answer. Will you tell me again what Jason Bonham  
17 told you?

18 A. Jason had told me he had spoken with Murphy, and  
19 that Mr. Murphy had told him --

20 MS. BALIDO: Judge, we're going to object to  
21 this as double hearsay.

22 THE COURT: Overruled.

23 Q. (By Mr. Davis) Now, would you please tell me  
24 again?

25 A. Jason had told me he had spoken with Mr. Murphy, and

1 he had told him where the body of Bertie Cunningham was.

2 Q. When he told you that, what, if anything, did you  
3 do?

4 A. Myself, Jason Bonham, and Deputy Joey Branch got in  
5 my car and drove to that location.

6 Q. Where exactly did you -- did the three of you go to?

7 A. To Livingston Road just north of Edgewood.

8 Q. Now, the location there at 501 Lamar, would that be  
9 fair to say that that house where Ora Mae Milton lives,  
10 that's say on the north side of town, a little bit on the  
11 west side?

12 A. Yes, sir.

13 Q. How far away from Ms. Milton's house did you and the  
14 other two officers go then?

15 A. I want to say approximately two to three miles.

16 Q. Okay. And again, what's the name of the creek that  
17 y'all went to?

18 A. It's known as Livingston is the way I've always  
19 known it.

20 Q. Just to kind of -- if you would describe that  
21 location for the members of the jury. If we were to drive  
22 out there along with you, what would we see? Is this an area  
23 where there are a lot of houses, a lot of people living, a  
24 developed area, or what sort of area was this?

25 A. There's not a lot of people live out there. It's

1 mostly farmland. It's outside the city limits of Edgewood.

2 Q. Is there a roadway that goes out there then?

3 A. Yes, sir.

4 Q. Is that a county road?

5 A. Yes, sir.

6 Q. Paved, unpaved, gravel?

7 A. Partially paved, some spots is rock.

8 Q. And as you went out there then, where exactly did  
9 you stop?

10 A. We stopped at the creek.

11 Q. This a well-lighted area?

12 A. No, sir.

13 Q. And what did you -- what did you do when you stopped  
14 there?

15 A. We all three got out of the car with our  
16 flashlights, walked up to the creek area, and shined our  
17 lights down in the creek.

18 MR. DAVIS: May I approach, Your Honor.

19 THE COURT: You may.

20 Q. (By Mr. Davis) Deputy, if you would please look at  
21 State's Exhibit 28, 29, and 30. Do these three photographs  
22 truly and accurately depict the area that you're just  
23 testifying about there on that county road by Livingston  
24 Creek?

25 A. Yes, sir.

1 Q. And do you think that they would assist the jury and  
2 you in explaining just what this particular location looked  
3 like?

4 A. Yes, sir.

5 MR. DAVIS: Your Honor, at this time we'll  
6 offer State's Exhibits 28, 29, and 30. These have previously  
7 been tendered to counsel.

8 (State's Exhibit No. 28 through 30 offered)

9 MR. BYCK: We have no objection to 28, 29, and  
10 30.

11 THE COURT: They are all admitted.

12 (State's Exhibit No. 28 through 30 admitted)

13 MR. BYCK: Greg --

14 (Discussion off the record.)

15 Q. (By Mr. Davis) And, Deputy, just so we're clear  
16 here, these are not photographs that were taken by you or any  
17 other member of Van Zandt County Sheriff's Department,  
18 correct?

19 A. No, sir.

20 Q. In fact, I'm not sure if you're aware, these are  
21 photographs that I took. Were you aware of that?

22 A. I think you might have mentioned that.

23 Q. Okay.

24 MR. DAVIS: Can the witness please stand down  
25 for just a moment?



1 THE COURT: You may.

2 MR. DAVIS: If you'll stand down here with  
3 me --

4 THE COURT: Defense may posture themselves in  
5 a manner that they may better observe the demonstration by  
6 the witness and the prosecutor.

7 Q. (By Mr. Davis) Deputy, we're now looking at State's  
8 Exhibit 28. And as we look at this, can you just explain to  
9 the members of the jury what they're now looking at?

10 A. This is the road called Livingston Road. It's a Van  
11 Zandt County road. It's north of Edgewood.

12 Q. What direction are we looking there?

13 A. North.

14 Q. Is this the portion of the county road that is not  
15 paved?

16 A. Yes, sir.

17 Q. Again, this location would be about how far out of  
18 town from Edgewood?

19 A. Approximately one mile.

20 Q. And you're out there about what time --

21 THE REPORTER: I'm sorry. I just heard  
22 "approximately." I didn't hear the end of the answer.

23 THE WITNESS: One. Approximately one mile.

24 Q. (By Mr. Davis) And approximately what time are you  
25 and the other two officers out there?

1 A. I want to say probably around 2:00 or 3:00ish in the  
2 morning.

3 Q. State's Exhibit Number 29. Tell the members of the  
4 jury what they'll be looking at here.

5 A. This is the creek where the body of Ms. Cunningham  
6 was found.

7 Q. Be fair to say that this photograph was taken from  
8 that county road looking down to the left portion of that  
9 road?

10 A. Yes, sir.

11 (Exhibit published to jury.)

12 Q. (By Mr. Davis) Finally, looking at State's Exhibit  
13 Number 30, does that show another view of the creek taken  
14 from an area now further down the creek, and we're looking  
15 back at the county road in the distance; is that correct?

16 A. Yes, sir.

17 Q. This photograph here, State's Exhibit Number 30,  
18 does this show certain boulders or rocks that line the creek?

19 A. Yes, sir.

20 Q. I take it that when you and the other two officers  
21 went out there, y'all didn't take photographs at that time,  
22 did you?

23 A. No, sir.

24 Q. Now, using State's Exhibit Number 30, Deputy, did  
25 you see anything unusual in the creek when you looked down

1 there?

2 A. The body was about down there.

3 Q. And you've indicated a spot. Have I now placed my  
4 finger in that spot?

5 A. Yes, sir.

6 Q. Okay. You say that you saw a body down in this  
7 location?

8 A. Yes, sir.

9 Q. Describe what you saw at that point?

10 A. The body was wrapped in what appeared to me to be  
11 maybe a green duffle bag and maybe some towels or blankets  
12 and then -- half of the body.

13 Q. Go ahead and have your seat again.

14 (Witness retakes the stand.)

15 Q. (By Mr. Davis) And these photographs, we see that  
16 there's some water in that creek. When you looked in the  
17 creek that night and saw the body, was there water in that  
18 creek?

19 A. Yes, sir.

20 Q. Approximately how deep would you say the water was?

21 A. I would say probably for the most part maybe one to  
22 two foot deep.

23 Q. Now, the body, did I understand you to say that it  
24 appeared to be wrapped, at least partially?

25 A. Yes, sir.

1 Q. Could you tell whether this was a male or a female?

2 A. At that point I couldn't tell.

3 Q. Could you tell whether the individual was white or  
4 black?

5 A. No, sir.

6 Q. You just saw that it was a body; is that right?

7 A. Right.

8 Q. When you saw that, what did you do next then?

9 A. I contacted the Garland Police Department.

10 Q. And how did you do that?

11 A. By cell phone.

12 Q. And did you in fact talk with some officers from the  
13 Garland Police Department?

14 A. Yes, sir.

15 Q. And why did you call them at that point?

16 A. To let them know that we have possibly another crime  
17 scene.

18 Q. And did you ask them anything at that point?

19 A. I just asked them if they wanted me just to hold  
20 both scenes.

21 Q. And did they ask you then to preserve both scenes  
22 until they got there?

23 A. Yes, sir.

24 Q. Now, did you stay out there at the creek or did you  
25 go to another location then?

1 A. I went to another location.

2 Q. Where did you go to?

3 A. I went back to the Dairy Queen in Edgewood.

4 Q. Did the other two officers go with you, or did they  
5 remain there at the scene?

6 A. They remained at that scene.

7 Q. And what was the purpose of leaving them behind?

8 A. To make sure no one bothered the scene, it was  
9 preserved.

10 Q. Now, at some point did Garland officers arrive there  
11 at the Dairy Queen in Edgewood?

12 A. Yes, sir.

13 Q. Do you remember the names of any of the officers who  
14 met with you that morning?

15 A. I remember Matt Myer.

16 Q. Detective Matt Myers?

17 A. Yes, sir.

18 Q. And did y'all have a short discussion there at the  
19 Dairy Queen?

20 A. Yes, sir.

21 Q. And then did you go somewhere with Detective Myers?

22 A. Yes, sir.

23 Q. Tell the members of the jury where the two of y'all  
24 went initially.

25 A. We went back to the creek.

1 Q. And did that give Detective Myers an opportunity to  
2 view the crime scene and the body?

3 A. Yes, sir.

4 Q. How long do you think that you and Detective Myers  
5 remained there at the scene?

6 A. Maybe 5 or 10 minutes.

7 Q. Where did the two of you go next?

8 A. We went back to Ms. Milton's residence in Edgewood.

9 Q. All right. And once you got there, what did you do?

10 A. I just basically turned everything over to him and  
11 the Garland Police Department.

12 Q. Okay. So I guess at that time that -- it basically  
13 become their case; is that right?

14 A. Yes, sir.

15 Q. Later did you actually release the crime scene there  
16 at Livingston Creek to the Garland Police Department?

17 A. Yes, sir.

18 Q. Did you also release the scene at Ms. Milton's house  
19 to the Garland Police Department?

20 A. Yes, sir.

21 Q. What was done with the silver Honda that you saw  
22 outside?

23 A. It was taken by the Garland Police Department.

24 Q. After you got to Ms. Milton's house, was the  
25 defendant still there?

1 A. Yes, sir.

2 Q. Did you have any further conversations with him?

3 A. No, sir.

4 Q. Were you present when any other police officers had  
5 conversations with him?

6 A. No, sir.

7 Q. At some point was the defendant transported to the  
8 Edgewood Police Department?

9 A. Yes, sir.

10 Q. Did you go to the Edgewood Police Department with  
11 him?

12 A. Yes, sir.

13 Q. All right. Were you actually the transporting  
14 officer, or did you simply meet him over there at the police  
15 department?

16 A. I just met them over there.

17 Q. What was the purpose of taking him to the police  
18 department?

19 A. To make sure they arrived at the police department.

20 Q. And did Judge Ozelle Wilcoxson finally arrive there?

21 A. Yes, sir.

22 Q. Were you present when the arraignment was done?

23 A. Yes, sir.

24 Q. Have you witnessed arraignments in the past?

25 A. Yes, sir.

1 Q. Did you -- again, did you witness the arraignment  
2 done by Judge Wilcoxson?

3 A. Yes, sir.

4 Q. Was there anything unusual about this arraignment in  
5 comparison to the other arraignments --

6 MS. BALIDO: Objection, bolstering.

7 THE COURT: Overruled.

8 Q. (By Mr. Davis) -- in comparison to the other  
9 arraignments that you had witnessed?

10 A. No, sir.

11 Q. How would you describe the defendant's behavior and  
12 his demeanor during the time that the Judge was arraigning  
13 him?

14 A. The same, calm. He stood there, didn't say  
15 anything. Didn't seem upset.

16 Q. Did Judge Wilcoxson actually read his Miranda  
17 rights?

18 A. Yes, sir.

19 Q. And were you asked to sign as a witness on the  
20 magistrate's warning sheets? Do you recall that?

21 A. I think I was. I can't really remember.

22 Q. How long did that arraignment take as you recall?

23 A. Probably -- maybe 15 minutes.

24 Q. You said that the defendant was quiet. Was he  
25 crying?



1 A. I don't remember him crying.

2 Q. Was he saying anything that in your mind led you to  
3 believe that it might be inappropriate?

4 A. No, sir.

5 Q. Did he appear to understand the warnings that the  
6 Judge had given to him?

7 A. Yes, sir.

8 Q. Following the arraignment then, did you do anything  
9 more with the defendant?

10 A. No, sir.

11 Q. Who took actual custody of the defendant at that  
12 time then?

13 A. I don't remember which Garland officer did.

14 Q. One of the Garland officers?

15 A. Yes, sir.

16 Q. And was it your understanding he was then  
17 transported to the City of Garland?

18 A. Yes, sir.

19 Q. I want to go back for just a moment when you were at  
20 that creek and you saw the body. Did you see any -- any type  
21 of wildlife in that creek?

22 A. There was a turtle.

23 Q. Describe to the members of the jury, what did that  
24 turtle look like?

25 A. It was a very large typical turtle that's found in

1 that area in the water.

2 Q. Was it close to the body?

3 A. Yes, sir.

4 Q. How close to the body was this turtle?

5 A. At one -- at one point it was very close, probably  
6 just inches that I seen it.

7 Q. Was anything done with the turtle at that time?

8 A. Not that I -- not that I'm aware of.

9 Q. Did you ever go back to the crime scene?

10 A. Yes, sir.

11 Q. When did you do that?

12 A. Probably -- are you talking about the one at the  
13 creek?

14 Q. Yes, sir, at the creek?

15 A. I returned there probably around 6 or 7 o'clock in  
16 the morning.

17 Q. Do you know whether or not Garland police officers  
18 went to that creek, to that crime scene?

19 A. Yes, sir.

20 Q. Were you present when they were there?

21 A. Yes, sir.

22 Q. But again, when they -- when they got there, was it  
23 your understanding that they were in charge of the crime  
24 scene as far as evidence collection, documentation of  
25 evidence, recovery of the body? Was that your

1 responsibility, or was that their responsibility?

2 A. That was Garland's responsibility.

3 Q. Thank you, Deputy.

4 MR. DAVIS: I'll pass the witness.

5 Cross-Examination

6 By Ms. Balido:

7 Q. Deputy Rose, as you already know, my name is  
8 Jennifer Balido. And I'm going to ask you some questions  
9 about your testimony in regard to this case and what you did  
10 on this case.

11 You had a couple of calls that night before you  
12 actually left your house and went down to the Dairy Queen; is  
13 that correct?

14 A. Yes, ma'am.

15 Q. Okay. And y'all didn't meet up at the Edgewood  
16 Police Department and y'all didn't meet up at the Wills Point  
17 Police Department and y'all didn't meet up at the Van Zandt  
18 Sheriff's Department, y'all met down at the Dairy Queen; is  
19 that correct?

20 A. Yes, ma'am.

21 Q. And who all met up down there at the Dairy Queen?

22 A. I know there was Sergeant Goodson, Ronnie Goodson of  
23 the Sheriff's Department; Corporal Joey Branch; James DeCoux;  
24 Officer Kenney from the Wills Point Police Department; Jason  
25 Bonham of the Edgewood Police Department. There was Officer



1 Harl Strange. And that's all I can remember off the top of  
2 my head that I met there.

3 Q. Was there one of y'all's civilian jailors with  
4 y'all, too, a guy by the name of Heath somebody?

5 A. Yes, ma'am.

6 Q. Okay. And he's not really a police officer or  
7 anything, he was just kind of along for the ride; is that  
8 correct?

9 A. He was riding with a deputy that night, yes, ma'am.

10 Q. All right. And basically the reason everybody was  
11 meeting up over there at the Dairy Queen was because the car  
12 had been spotted over at Ms. Milton's house; is that correct?

13 A. Yes, ma'am.

14 Q. Okay. And so who was in charge of how things were  
15 going to happen once y'all started to move on Ms. Milton's  
16 house?

17 A. I was.

18 Q. Okay. And is it true or is it not true that there  
19 were -- there was a perimeter team that kind of was going  
20 around the back of the house and then there was also the  
21 arrest team?

22 A. Yes, ma'am.

23 Q. Okay. And who was part of the arrest team?

24 A. I was, Corporal Branch was, Sergeant Rick Goldey  
25 was. Those three I can remember off the top of my head. I

1 can't remember who else was in the house with us.

2 Q. Okay. Do you not remember testifying previously  
3 that also Jason Bonham was one of the first people inside the  
4 house?

5 A. I don't remember saying that he was one of the first  
6 ones inside the house.

7 Q. Okay. So -- so if you said that previously, you  
8 don't remember saying that?

9 A. No, I didn't think that's what I said.

10 Q. Okay. So basically you walked up to Ms. Milton's  
11 house; is that correct?

12 A. Yes, ma'am.

13 Q. And you knew it was Ms. Milton's house?

14 A. Yes, ma'am.

15 Q. Okay. And you knew that -- that that's where Shod  
16 or Treshod Tarrant lived; is that correct?

17 A. Yes, ma'am.

18 Q. You had been out there before?

19 A. Yes, ma'am.

20 Q. Had you been out there for business or pleasure?

21 A. Business.

22 Q. Okay. And you recognized Ms. Milton, correct?

23 A. Yes, ma'am.

24 Q. And you told her pretty much it was Gary Rose of the  
25 Van Zandt County Sheriff's Department; is that correct?

1 A. Yes, ma'am.

2 Q. And she knew who you were?

3 A. Yes, ma'am.

4 Q. Did you tell her that you had a warrant for Jim  
5 Murphy's arrest?

6 A. Yes, ma'am.

7 Q. Okay. Or did you -- and that's what your police  
8 report says, or did you tell her that you couldn't tell her  
9 what it was all about, but you just needed to speak to Jim?

10 A. No, I told her I had a warrant for his arrest.

11 Q. All right. And when you entered the house, did  
12 you -- were the lights on or off in the house?

13 A. Best I remember they was all off.

14 Q. Okay.

15 A. It was dark, so --

16 Q. And did you turn on any lights as you entered the  
17 house?

18 A. No, ma'am.

19 Q. So how were you getting about? Did y'all have  
20 flashlights?

21 A. Yes, ma'am.

22 Q. Did you have a flashlight in one hand and your gun  
23 in the other hand?

24 A. Yes, ma'am.

25 Q. All right. Who was the first person in -- in the

1 door?

2 A. I was.

3 Q. And who were the second and third and fourth people  
4 in the door?

5 A. I couldn't tell you.

6 Q. Okay. And what happened once you got inside?

7 A. Once I got inside the house --

8 Q. Right.

9 A. -- or the bedroom?

10 Q. Right inside the house?

11 A. Inside the house?

12 Q. Uh-huh.

13 A. I went straight towards -- I asked Ms. Milton where  
14 he was in the house and she indicated back to the east of the  
15 house and I started down the small hallway.

16 Q. And you entered the bedroom where -- where you  
17 believed Jim to be; is that correct?

18 A. Yes, ma'am.

19 Q. Okay. And what was the first thing you did?

20 A. I walked straight up to the bed.

21 Q. All right. Did you say you're under arrest?

22 A. I think I called him by name.

23 Q. Okay.

24 A. Is the first thing I said.

25 Q. Okay. Did you call him Jedidiah Isaac Murphy or did



1 you call him Jim Murphy?

2 A. I probably called him Jim. I don't remember which  
3 one I used.

4 Q. Okay. Did you know him as Jim?

5 A. I've heard him by both names.

6 Q. Okay. At that time you had?

7 A. Yes.

8 Q. And so you -- y'all went into the room, you grabbed  
9 him, flipped him over, and handcuffed his hands behind his  
10 back?

11 A. Yes.

12 Q. Okay. And who helped you do that?

13 A. I believe it was Joey Branch was in the room to help  
14 me. I believe Rick Goldey helped. I mean, I'm looking  
15 down. I'm not looking to see whose hands are whose, so --

16 Q. Okay.

17 A. -- I'm just speculating here.

18 Q. And who -- and so were you speculating when you  
19 testified previously that also Officer Bonham was in the  
20 room?

21 A. Okay. I don't think I testified that he was in the  
22 room when we arrested him. I think I testified he was in the  
23 room when I read him his Miranda rights.

24 Q. Okay. So let's talk about that for a little bit.

25 A. Okay.

1 Q. You said that you told the D.A. that you were --  
2 that you had actually read Mr. Murphy his Miranda rights?

3 A. Yes, ma'am.

4 Q. Okay. And you looked at the jury and you said  
5 exactly what those Miranda rights were; is that correct?

6 A. Yes, ma'am.

7 Q. Okay. And -- and Mr. Davis asked you, were -- was  
8 he looking at you, and you said yes. And that's the truth;  
9 is that correct?

10 A. Yes, ma'am.

11 Q. And that he asked you if he seemed to be listening,  
12 and you said yes; is that correct?

13 A. Yes, ma'am.

14 Q. And then Mr. Davis asked you if he ever tried to  
15 interrupt you, and you said no?

16 A. That's correct.

17 Q. Okay. And then he asked you if there was anything  
18 that led you to believe that he did not understand his  
19 warnings, and you said no.

20 A. Correct.

21 Q. Is there anything that led you to believe that he  
22 did understand his warnings?

23 A. He didn't ask any questions about them, didn't make  
24 any expressions like he didn't understand.

25 Q. Did you say do you understand your warnings?

1 A. I don't remember if I asked him or not.

2 Q. Did you go through there and did you say you have a  
3 right to remain silent, do you understand that?

4 A. No.

5 Q. Did you say, you have the right, you know, to have a  
6 lawyer appointed for you and before you make any statement,  
7 do you understand that?

8 A. No, ma'am.

9 Q. You say that if you can't afford a lawyer, one will  
10 be appointed for you, do you understand that?

11 A. No.

12 Q. Did you say, you can terminate this interview at any  
13 time, Jim, do you understand that?

14 A. No, ma'am.

15 Q. Did he ever say to you, I understand all that and I  
16 want to make a statement?

17 A. No.

18 Q. Did he ever make any indication to you at all that  
19 he did understand his warnings?

20 A. He didn't verbally say he understood them, no.

21 Q. And you never asked him?

22 A. No, ma'am. I cannot remember if I asked him or not.

23 Q. And it's not in your police report?

24 A. Correct.

25 Q. Okay. It says in your police report that you read

1 Jedidiah Murphy his Miranda rights, but you really didn't  
2 read them, you just kind of recited them; is that correct?

3 A. Correct.

4 Q. But it doesn't say anything in your report about him  
5 understanding and waiving his rights, does it?

6 A. No, ma'am, it doesn't.

7 Q. When you walked into the room, was Mr. Murphy asleep  
8 on the bed?

9 A. Yes, ma'am.

10 Q. Okay. Was it a situation that he looked up and  
11 looked at you before you got to the bed?

12 A. No, ma'am.

13 Q. Okay. So he was dead asleep on the bed before you  
14 laid your hands on him?

15 A. Yes, ma'am.

16 Q. So is it safe to assume that you got him up from  
17 sleep?

18 A. Yes, ma'am.

19 Q. Was there anything in the room that led you to  
20 believe that he had been drinking?

21 A. Not that I recall.

22 Q. Okay. There wasn't a smell of an alcoholic beverage  
23 in there?

24 A. I didn't smell anything.

25 Q. Okay. There wasn't a smell on or about his person

1 or his clothes that smelled like marijuana, was there?

2 A. Not that I recall.

3 Q. Okay. Now, at this point is Treshod inside the room  
4 or outside the room?

5 A. He was inside the room.

6 Q. Okay. And did Treshod smell like he had been  
7 drinking?

8 A. I didn't get that close to him.

9 Q. Okay. When you walked in the room, were you -- did  
10 you smell on anybody's clothes the smell of any marijuana?

11 A. No, ma'am.

12 Q. Did Mr. Murphy have his glasses on or his glasses  
13 off?

14 A. I believe they were off.

15 Q. Because he was sleeping?

16 A. Right.

17 Q. Now, Mr. Davis asked you if you thought he was  
18 intoxicated, and you said no; is that correct?

19 A. That's correct.

20 Q. And he asked if he was on drugs, and you said not  
21 that you could tell; is that correct?

22 A. That's correct.

23 Q. I'm going to ask you some questions a little bit  
24 about your training as a police officer. There's a test that  
25 is easily done called the horizontal gaze nystagmus test.

1 Are you trained in that test?

2 A. No, ma'am.

3 Q. Okay. You've never -- you've never -- is it your  
4 understanding that that's one of the indications -- that is  
5 one of the tests that is an indicator of whether or not  
6 there's alcohol in somebody's system?

7 A. Yes, ma'am.

8 Q. And you can also do something that's called the  
9 hor -- I mean, the vertical gaze nystagmus test to determine  
10 if there's any drugs in somebody's system; is that correct?

11 A. That's correct.

12 Q. Okay. But you're not trained in that, are you?

13 A. No, ma'am.

14 Q. Okay. And you didn't perform this -- this test on  
15 him?

16 A. No, ma'am.

17 Q. Okay. Did you do any sort of tests to determine  
18 whether or not he was under the influence of any drugs or any  
19 alcohol at the time that you busted into the bedroom?

20 A. No, ma'am.

21 Q. Did you ever ask anybody that might have been  
22 trained in some of these intoxication tests to come forward?

23 A. No, ma'am.

24 Q. As soon as you got finished reading his rights to  
25 him and after he had no response, you asked him some

1 questions?

2 A. Yes, ma'am.

3 Q. How long were you with the defendant?

4 A. Maybe 5 or 6 minutes.

5 Q. Okay. And then you left and went outside the  
6 bedroom; is that correct?

7 A. Yes, ma'am.

8 Q. And what did you do once you were outside the  
9 bedroom?

10 A. I went out to where the vehicle was, the Honda, and  
11 opened the trunk.

12 Q. And how did do you that? How did you get the keys?

13 A. The keys were in the living room.

14 Q. So you grabbed the keys and went out there. Wasn't  
15 there some discussion or some kind of -- and when I say  
16 discussion, some sort of discussion with some other officers  
17 as to where the keys were? Did you get the keys from  
18 somebody else?

19 A. No, ma'am.

20 Q. Okay. You didn't get the keys from Jason Bonham?

21 A. No, ma'am.

22 Q. Or any other member of the Van Zandt County  
23 Sheriff's Department?

24 A. No, ma'am.

25 Q. Or the Edgewood Police Department?

1 A. No, ma'am.

2 Q. And there were some people from Terrell out there  
3 eventually, weren't there?

4 A. I never seen anybody from Terrell out there.

5 Q. Okay. So you got the keys and went out to the car?

6 A. Yes, ma'am.

7 Q. Let me ask you a question and go back a little bit  
8 while you're sitting outside the Dairy Queen. You're sitting  
9 outside the Dairy Queen and at some point somebody makes the  
10 decision that y'all are going to go to the house; is that  
11 correct?

12 A. Yes, ma'am.

13 Q. And you call in to the Garland Police Department and  
14 let them -- and let them know what's going on?

15 A. Yes, ma'am.

16 Q. Okay. Who did you talk to?

17 A. I believe it was Commander Lay.

18 Q. Okay. Commander Lay of the Garland Police  
19 Department?

20 A. Yes, ma'am.

21 Q. Okay. And isn't it true that Commander Lay told you  
22 not to attempt to arrest Jedidiah Murphy until they got  
23 there?

24 A. No, ma'am.

25 Q. So it's your testimony that he said go ahead and



1 arrest him?

2 A. Yes, ma'am.

3 Q. Go ahead and bust in there and recover the stolen  
4 vehicle?

5 A. Yes, ma'am.

6 Q. And they were on their way?

7 A. Yes, ma'am.

8 Q. Was there anything that -- let me ask you it this  
9 way. After y'all got out there to the house, was there  
10 anything besides your concern for the case and the type of  
11 case you were dealing with, anything that happened out at the  
12 house that caused you to kind of jump the gun and go in  
13 sooner than expected?

14 A. No, ma'am.

15 Q. Okay. The house was quiet?

16 A. Yes, ma'am.

17 THE COURT: Anything further?

18 MS. BALIDO: No, Judge, I still have some more  
19 questions. I'm sorry.

20 Q. (By Ms. Balido) You opened up the trunk, so you  
21 placed your hands on the -- on the keys to actually open up  
22 the trunk; is that correct?

23 A. Yes, ma'am.

24 Q. And did you place your hands on the trunk as well?

25 A. No, ma'am.

1 Q. Just -- just on the keys and opened it up?

2 A. Yes, ma'am.

3 Q. Did you touch in -- anything inside the trunk?

4 A. No, ma'am.

5 Q. Did you ever tell Jason Bonham -- well, let me ask  
6 you a question. Jason Bonham of the Edgewood Police  
7 Department was standing outside the house at that point, is  
8 that correct, or was he inside the house?

9 A. He was inside the house -- I -- now, let me rephrase  
10 it. I don't know -- I didn't know at that point where he  
11 was.

12 Q. Okay. And it's not a big house out there, is it?

13 A. No, ma'am.

14 Q. Okay. So let me just try to get this straight. You  
15 come out of the bedroom --

16 A. Yes, ma'am.

17 Q. -- at some point? And where is Jason at that point?

18 A. At that point I'm not sure where he is, because I'm  
19 concentrating on going out and checking the car.

20 Q. Did you say anything to Jason about going in and  
21 talking to the defendant?

22 A. No, ma'am.

23 Q. You never said go in there and -- you never said  
24 he's lying to me, go in there and see what you can do with  
25 him?

1 A. No, ma'am.

2 Q. Or see if you can find out anything?

3 A. No, ma'am.

4 Q. So it's your testimony that the first time that you  
5 talked to Jason was after he spoke with the defendant?

6 A. Yes, ma'am.

7 MS. BALIDO: May I approach the witness.

8 THE COURT: You may.

9 Q. (By Ms. Balido) I'm directing your attention back  
10 to State's Exhibits Number 28, 29, 30, and 31, and ask if  
11 those are the pictures that you have talked about being in  
12 the area of what's called Livingston or Livingston Hill; is  
13 that correct?

14 A. 28, 29, 30 --

15 Q. I'm sorry.

16 A. I don't know about 31.

17 Q. I'm sorry. 28, 29 and 30; is that correct?

18 A. Yes, ma'am.

19 Q. Okay. And you said this was kind of a rural area?

20 A. Yes, ma'am.

21 Q. Are there farmhouses around here?

22 A. There are houses, but they're scattered way far.

23 Q. Okay. And from where these pictures are taken,  
24 isn't it true that at the point where these pictures are  
25 taken that there is actually a farmhouse about 500 yards away

1 from where these were taken or is that not true?

2 A. The closest house that I can recall is going to be  
3 back south of this location.

4 Q. Okay. And about how close is it going to be?

5 A. It's probably going to be at least -- I want to  
6 guess about half a mile.

7 Q. Okay. So would that be about 500 yards? I don't  
8 know anything about math, so I don't know.

9 A. I can't remember how long a mile is in yards.

10 Q. Okay. And there -- out there along the road there  
11 is -- along that road next to Livingston Hill where you were  
12 talking about, there's a telephone pole with some lines going  
13 to and from the houses out there; is that correct?

14 A. Yes, ma'am.

15 Q. So after you get finished talking to -- well, after  
16 you get finished talking to the defendant and after you get  
17 finished going out and opening up the car and shutting it  
18 back and telling everybody not to touch it, you went out to  
19 Livingston Hill; is that correct?

20 A. Yes, ma'am.

21 Q. And at that time the Garland Police Department was  
22 not at the house on Lamar?

23 A. No, ma'am.

24 Q. Then y'all went out to Livingston Hill and you came  
25 back and still the Garland Police Department is not at Lamar?

1 A. That's correct.

2 Q. You're talking to them on the cell phone?

3 A. Correct.

4 Q. Okay. So basically you're the person that's in  
5 charge of the scene and what has gone on in the investigation  
6 up to that point?

7 A. Yes, ma'am.

8 Q. Is this the first capital murder that you've ever  
9 worked?

10 A. Yes, ma'am.

11 Q. And is -- is Mr. Murphy the first capital murder  
12 defendant that you've ever read rights to?

13 A. Yes, ma'am.

14 Q. So you went back to the Dairy Queen at Edgewood and  
15 that's where you met up with all the Garland police is at the  
16 Dairy Queen?

17 A. Yes, ma'am.

18 Q. And you had no further conversations with Mr.  
19 Murphy; is that correct?

20 A. No, ma'am.

21 Q. Okay. You took Commander Lay -- according to your  
22 report, you took Commander Lay and the other officers to  
23 Lamar Street; is that right?

24 A. We first went to Livingston Creek first.

25 Q. Oh, that's right. And then -- and then you took

1     them -- and then you took them back over to the house on  
2     Lamar?

3         A.     Yes, ma'am.

4         Q.     And then you went to the Edgewood Police Department?

5         A.     Yes, ma'am.

6         Q.     And how did you go there? In what vehicle?

7         A.     I went in my -- my vehicle.

8         Q.     Okay. And then how was Mr. Murphy transported?

9         A.     By Garland.

10        Q.     Okay. And who was in the car with Mr. Murphy at  
11     that time?

12        A.     I believe -- if I remember correctly, Mr. Matt Myer  
13     was, Detective Myer, and I don't know who the other officer  
14     was.

15        Q.     Okay. And did they both sit in the front seat or  
16     did one of them sit in the back seat with Mr. Murphy?

17        A.     That I couldn't tell you.

18        Q.     Did you ride along behind them while you were  
19     driving along or --

20        A.     No, I was in front.

21        Q.     In the front. Leading them -- leading them to --

22        A.     Yes.

23        Q.     -- the police department? Okay.

24               And then you testified that you were there when the  
25     defendant was arraigned; is that correct?

1 A. Yes, ma'am.

2 Q. How would you describe him when he was arraigned?

3 A. Very quiet, stood there. As far as I can remember,  
4 he didn't say anything.

5 Q. Okay. You don't remember him saying anything,  
6 anything at all?

7 A. Not that I can remember.

8 Q. Okay. So you don't remember him saying, yes, he  
9 understood to each one of his rights as they were read to  
10 him?

11 A. Not that I remember.

12 Q. Okay.

13 MS. BALIDO: May I approach the witness.

14 THE COURT: You may.

15 Q. (By Ms. Balido) Deputy Rose, I'm showing you what  
16 has been introduced into evidence as State's Exhibit Number  
17 36 and State's Exhibit Number 35, and I ask if you recognize  
18 those documents?

19 A. Yes, ma'am.

20 Q. And those are the two arraignment sheets that were  
21 used by the JP out there to read Mr. Murphy his rights; is  
22 that correct?

23 A. Yes, ma'am.

24 Q. Okay. And your name is listed as a witness; is that  
25 correct?

1 A. Yes, ma'am.

2 Q. But you weren't the only witness, were you?

3 A. No.

4 Q. Okay. Those two officers from Garland were also  
5 there; is that correct?

6 A. Yes, ma'am.

7 Q. But you're the only one that actually signed as a  
8 witness, is that also correct?

9 A. Yes, ma'am.

10 Q. And is that to say that you were there during the  
11 entire time that Mr. Murphy was read his rights?

12 A. Yes, ma'am.

13 Q. Okay. Would you describe him as sleepy at that  
14 time?

15 A. I really couldn't say whether he sleepy or not.

16 Q. Okay. Was he more or less sleepy than he was when  
17 you woke him up in bed that morning?

18 A. He just stood there. As far as I remember, didn't  
19 say anything. That's about the best I can describe him.

20 Q. Okay. So would you say that he was pretty much the  
21 same as he was when you first arrested him?

22 A. Probably so.

23 Q. You said he was calm, correct?

24 A. Right.

25 Q. Could you describe him as flat?



1 A. What do you mean by flat?

2 Q. Like no emotion?

3 A. Yeah, I mean, he -- probably so because he wasn't  
4 saying anything, no expressions that I could see on his face,  
5 just there.

6 Q. Okay. He certainly wasn't happy?

7 A. Probably not.

8 Q. Okay. He wasn't doing anything inappropriate to  
9 make you think that he wasn't -- that he was making fun of  
10 the situation or anything like that?

11 A. No.

12 Q. Up until the point, or I guess after the Garland  
13 Police Department officers arrived, they were in charge of  
14 the investigation; is that correct?

15 A. After they arrived?

16 Q. Yes.

17 A. Yes, ma'am.

18 Q. And up until that point you were the lead person on  
19 this investigation; is that correct?

20 A. Yes, ma'am.

21 Q. And it was your responsibility to make sure that  
22 everything was done by the book, so to speak; is that also  
23 correct?

24 A. Yes, ma'am.

25 MS. BALIDO: I don't have any more questions.

1 MR. DAVIS: Thank you.

2 Redirect Examination

3 By Mr. Davis:

4 Q. Deputy Rose, let me just ask you: When you got to  
5 the home of Ms. Milton, did you know the location of Ms.  
6 Cunningham's body?

7 A. No, sir.

8 Q. After you had talked with the defendant, did you  
9 know the location of the body?

10 A. No, sir.

11 Q. Did you know the location of Ms. Cunningham's body  
12 before Jason Bonham --

13 MS. BALIDO: Objection, leading.

14 Q. (By Mr. Davis) -- told you what --

15 THE COURT: Overruled.

16 Q. (By Mr. Davis) -- the defendant had told -- told  
17 him?

18 A. I'm sorry. Could you say it again?

19 Q. Did you know the location of Ms. Cunningham's body  
20 before Jason Bonham came up and told you what the defendant  
21 had told him?

22 A. No, sir.

23 Q. As you're going out there to the creek, who was  
24 actually given the directions about where y'all were going to  
25 be going to?

1 A. Jason Bonham.

2 MR. DAVIS: May I approach, Your Honor.

3 THE COURT: You may.

4 Q. (By Mr. Davis) Deputy Rose, if you will, look at  
5 State's Exhibit Number 27. Do you recognize that to be a map  
6 of Edgewood, Texas, sir?

7 A. Yes, sir.

8 Q. Does it show the location of Ms. Milton's home, as  
9 well as the location where you and the other officers found  
10 the body of Ms. Cunningham?

11 A. Yes, sir.

12 MR. DAVIS: At this time we'll offer State's  
13 Exhibit Number 27.

14 (State's Exhibit No. 27 offered)

15 MR. BYCK: No objection, 27.

16 THE COURT: Admitted.

17 (State's Exhibit No. 27 admitted)

18 Q. (By Mr. Davis) Deputy, if you would, just place an  
19 X for the location of Ms. Milton's house and then write  
20 "Milton" by that if you don't mind.

21 A. (Witness so indicates.)

22 Q. Now, if you would, please put an X where you found  
23 the body of Ms. Cunningham and then put "Cunningham" beside  
24 that, please.

25 A. (Witness so indicates.)

1 MR. DAVIS: May I publish, Your Honor.

2 THE COURT: You may.

3 (Exhibit published to jury.)

4 MR. DAVIS: No further questions, Your Honor.

5 MS. BALIDO: May I approach the witness.

6 THE COURT: You may.

7 Recross-Examination

8 By Ms. Balido:

9 Q. State's Exhibit Number 27, the exhibit you just  
10 spoke about with Mr. Davis, is the entirety of that location  
11 in Van Zandt County, Texas?

12 A. Yes, ma'am.

13 Q. Is any of that in State's Exhibit Number 27 in  
14 Dallas County, Texas?

15 A. No, ma'am.

16 Q. Now, Mr. Davis also asked you about a bunch of  
17 questions about what you knew before you spoke to Jason  
18 Bonham and what you knew after you spoke to Jason Bonham.  
19 You remember that?

20 A. Yes, ma'am.

21 Q. Before you talked to Jason Bonham, did you tell any  
22 member of the television press that it was an accident, that  
23 Mrs. Cunningham was killed by accident?

24 A. Before I spoke to Jason Bonham?

25 Q. Yes.

1 A. No, ma'am.

2 Q. After you spoke to Jason Bonham, did you tell any  
3 member of the television press that it was an accident, the  
4 killing of Bertie Cunningham?

5 A. No, I believe I might have said that he had stated  
6 it was an accident.

7 MS. BALIDO: Pass the witness.

8 Further Direct Examination

9 By Mr. Davis:

10 Q. Okay. Let's get into conversation that you had with  
11 the defendant now. And when you asked the defendant where  
12 Ms. Cunningham's body was, did he give you a location? Was  
13 that his first response to you?

14 A. He didn't give me --

15 MS. BALIDO: Judge, I object to the content  
16 of -- I asked my question very specifically about -- based  
17 on just like the State did and I don't believe that we've  
18 opened it up or waived the objection that we have to the --  
19 any oral statements by the defendant.

20 THE COURT: Defense objection is overruled.  
21 The State may proceed.

22 MR. DAVIS: Okay.

23 Q. (By Mr. Davis) First of all, what is the first --  
24 what is the first thing that you said to the defendant after  
25 you gave him his Miranda warnings?

1 A. I asked him where Bertie Cunningham was.

2 Q. And what response, if any, did the defendant give to  
3 you, Deputy?

4 A. He lowered his head, and he said it was an accident,  
5 I didn't mean to shoot her.

6 Q. All right. And did you say anything next to the  
7 defendant?

8 A. Yes, sir.

9 Q. What did you say to him?

10 A. I asked him if she was dead.

11 Q. What did he say to you?

12 A. He said, yes.

13 Q. Did you ask him anything else?

14 A. Yes, sir.

15 Q. What did you say to him?

16 A. I asked him where her body was.

17 Q. And did he respond to that?

18 A. Yes, sir.

19 Q. Tell the members of the jury what the defendant said  
20 to you when you asked him the second time where her body was?

21 A. He said he didn't know, that somebody else had put  
22 her in the trunk of the car and carried her and dumped her up  
23 in the Dallas area.

24 Q. And is that the last bit of the conversation that  
25 you had before you stopped talking with him and got the car

1 keys and went out there to the Honda?

2 A. Yes, sir.

3 MR. DAVIS: I'll pass the witness, Your Honor.

4 Further Cross-Examination

5 By Ms. Balido:

6 Q. Detective Rose, let me ask you a question: The  
7 first question you asked him was where is she; is that  
8 correct?

9 A. I asked him where Bertie Cunningham was.

10 Q. Is it true or is it not true that that was the first  
11 thing that you said to him, not that he was under arrest and  
12 not that he -- and not his Miranda warnings?

13 A. No, ma'am.

14 Q. Okay. You didn't just bust in there and ask where  
15 is she, where is she?

16 A. No, ma'am.

17 Q. And your opinion at that point Treshod Tarrant was  
18 still in the room?

19 A. At that point I don't know if Shod was still in the  
20 room or if they had already moved him to the living room.

21 Q. Okay. So he was in the room at some point, and then  
22 he was out of the room; is that correct?

23 A. Yes, ma'am.

24 Q. And what was Mr. Murphy's physical response to your  
25 question of where Ms. Cunningham was?

1 A. His physical response?

2 Q. Yes.

3 A. He lowered his head.

4 Q. Okay. And that's when he stated that it was an  
5 accident?

6 A. Yes, ma'am.

7 Q. And that the gun went off?

8 A. Yes, ma'am.

9 Q. And you asked him if he was -- if she was dead; is  
10 that correct?

11 A. Yes, ma'am.

12 Q. And he said that she was?

13 A. Yes, ma'am.

14 Q. And then you asked him about the location of the  
15 body, is that also correct?

16 A. Yes, ma'am.

17 Q. And what was his response to you?

18 A. That someone else had put her in the trunk and had  
19 dumped her body in the Dallas area, he didn't know where it  
20 was.

21 Q. Okay. Did he mention who that someone else was?

22 A. No, ma'am.

23 Q. Did he ever say that he had help from somebody else  
24 that was located inside the house?

25 A. No, ma'am.



1 Q. Did he ever indicate to you that it was Treshod  
2 Tarrant that helped him move the body?

3 A. No, ma'am.

4 Q. He just said somebody else?

5 A. Yes, ma'am.

6 Q. Did you ask him for that somebody else's name?

7 A. I don't remember if I did or if I didn't.

8 Q. So that was the totality of what Mr. Murphy told you  
9 before you went outside and looked in the car?

10 A. Yes, ma'am.

11 Q. Why did you go out and look in the car?

12 A. Because other officers that came in and told me that  
13 there was blood on the bumper and that it was a strong smell  
14 coming out of the car.

15 Q. Okay. So -- so now these other officers are coming  
16 into it, too?

17 A. Right.

18 Q. And you went out and you checked to see if she was  
19 in the car and she wasn't in there?

20 A. Correct.

21 Q. So at least the part about her not being in the  
22 trunk, being someplace else is the truth; is that correct?

23 A. Yes, she was not in the trunk.

24 Q. Okay. Let me ask you. Was Jason Bonham on duty at  
25 the time?

1 A. I believe he was off that night.

2 Q. Okay. But he had a uniform on. Do you remember  
3 that?

4 A. I don't remember what he was wearing.

5 Q. Okay. Do you know that he has an off duty job as a  
6 security person?

7 A. No, I didn't know that.

8 Q. Okay. Did you send Jason Bonham in there to talk to  
9 the defendant?

10 A. No, ma'am.

11 MS. BALIDO: Pass the witness.

12 MR. DAVIS: No further questions.

13 THE COURT: You may step down.

14 MS. BALIDO: Judge, we'd ask that this witness  
15 not be excused and stay in the courthouse.

16 THE COURT: Sheriff, let's take a stretch  
17 break for the jury and a rest break for the court reporter.  
18 15 minutes.

19 THE BAILIFF: All rise.

20 (Jury recessed from courtroom.)

21 THE COURT: Record reflect this hearing is  
22 being conducted in open court, outside the jury's presence.

23 At the request of the defense, I have gone over the  
24 notes of Grand Prairie Police Department --

25 MS. BALIDO: Garland.

1 THE COURT: -- the Garland Police Department,  
2 Officer Matt Myers, page by page. A thick notebook was  
3 tendered to me. I have gone over every single page of that  
4 notebook and wish to state on the record now, I am unaware of  
5 anything of a Brady, Bagley, Kyles, Strickler nature to which  
6 the defense is entitled.

7 Sheriff, may be have the jury, please.

8 THE BAILIFF: Yes, sir.

9 THE COURT: Let the record reflect the jury is  
10 returning to the courtroom at this time.

11 (Jury returned to courtroom.)

12 THE COURT: Members of the jury, you may be  
13 seated.

14 Mr. Murphy, counsel, visitors in the gallery, you  
15 may be seated.

16 MR. DAVIS: Thank you.

17 MATT MYERS  
18 was called as a witness by the State and, after having been  
19 first duly sworn, testified as follows:

20 Direct Examination

21 By Mr. Davis:

22 Q. Sir, would you please tell us your full name?

23 A. My name is Matt Myers.

24 Q. How are you employed?

25 A. I'm a detective with the Garland Police Department.

1 Q. How long have you been employed by the Garland  
2 Police Department?

3 A. I've just started my 24th year.

4 Q. What is your present assignment?

5 A. My present assignment is I'm a detective with the  
6 Crimes Against Persons Unit.

7 Q. How long have you been in that particular unit?

8 A. I've been in the Crimes Against Persons Unit  
9 since -- for about three years. I've been a detective since  
10 1998 -- I'm sorry, since 1988, excuse me.

11 Q. As a member of the Crimes Against Persons Unit, can  
12 you tell the members of the jury what type of cases that  
13 you've worked on?

14 A. Well, we investigate some different cases,  
15 robberies. We also investigate homicides and assaults.

16 Q. Now, in reference to this case involving the death  
17 of Bertie Cunningham, were you the lead detective?

18 A. Yes, I was.

19 Q. I want to direct your attention back, Detective, to  
20 October the 5th of the year 2000, approximately right after  
21 midnight, did you first become aware of this case?

22 A. Yes, I did.

23 Q. How did you become aware of the case?

24 A. I was notified over the telephone by my supervisor.

25 Q. And what was the nature of the case at that point

1     shortly after midnight? Was this a homicide, or was this  
2     working as another type of case?

3           A.     Yes, sir, we were initially advised of a missing  
4     person, and that's how we started our investigation.

5           Q.     Were you at home when you got called?

6           A.     Yes, I was.

7           Q.     Did you go somewhere after you received that call?

8           A.     Yes, I did.

9           Q.     Where did you go to?

10          A.     I went directly to the Garland Police Department.

11          Q.     Did you meet with other investigators there?

12          A.     Yes, I did.

13          Q.     Did you stay there at the police department, or did  
14     you go to other locations then?

15          A.     We were at the police department for a little while,  
16     but we did go to some other locations that -- that early  
17     morning.

18          Q.     Tell the members of the jury where you went. Did  
19     you go by yourself, first of all, or with other officers?

20          A.     No, I was with another -- another detective,  
21     actually my supervisor.

22          Q.     And who would that be?

23          A.     That was Lieutenant Thompson.

24          Q.     Where did you and Lieutenant Thompson go to then?

25          A.     Well, the first thing that we did when we left the

1 police department was go to the area of Collin Creek Mall.

2 Q. And Collin Creek Mall is located in Plano; is that  
3 right?

4 A. Yes, it is.

5 Q. What would be the nearest intersections, just to  
6 give the jury an idea if they're not aware of where Collin  
7 Creek Mall is?

8 A. Well, Collin Creek is located north of our city  
9 limits. It's basically off of Central Expressway or I-75.

10 Q. Uh-huh. You went there for the purpose of doing  
11 what?

12 A. Well, it was to make sure that a thorough search of  
13 that grounds had been done. We were -- had been advised that  
14 that was the last place that Ms. Cunningham had been seen, so  
15 it was a starting point to make sure that -- that a thorough  
16 search had been done there.

17 Q. Were you looking for her car?

18 A. Yes.

19 Q. Did you find Ms. Cunningham's car there?

20 A. No, we did not.

21 Q. Any evidence that Ms. Cunningham was there?

22 A. No.

23 Q. How long did you stay there?

24 A. I would estimate that we were in the mall area for  
25 about 20 or 30 minutes.

1 Q. Where did you next go to?

2 A. After we left the mall, we drove to a business  
3 called Richardson Motor Sports.

4 Q. And would that be -- would it be fair to say that's  
5 south on North Central Expressway from Collin Creek Mall?

6 A. Yes, it is.

7 Q. Is that actually located in Richardson?

8 A. Yes, it is.

9 Q. Again, the purpose of you going to that location was  
10 what?

11 A. Well, we had received some information that a credit  
12 card had been used there, so I just -- I wanted to get a feel  
13 of where that location was. I knew I would be returning  
14 there, so I wanted to locate it so I would know exactly where  
15 it was and know that I would be returning there the next day.

16 Q. Okay. So how long did you and Lieutenant Thompson  
17 stay at that location?

18 A. We probably were only there for about 5 or 10  
19 minutes, not very long. We checked the alley, did a search  
20 of the immediate area around the -- around that business, but  
21 we weren't there very long, maybe 10 minutes.

22 Q. Did you talk with anyone at that location?

23 A. Not at that time.

24 Q. Where did you go next then?

25 A. Our next -- the next thing we did was we started

1 checking some -- some of the main roads that would have been  
2 between Ms. Cunningham's residence and the mall.

3 Q. Did you check Plano Road?

4 A. Yes, we did.

5 Q. Did you check Jupiter Road?

6 A. Yes, we did.

7 Q. Do you recall any of the other major streets that  
8 you checked that morning?

9 A. Plano and Jupiter would have been the two -- two  
10 main north-south arteries from her house. I think we checked  
11 a couple of east-west roads just to make sure the car wasn't  
12 somewhere off of a direct route.

13 Q. Were you able to find Ms. Cunningham's car on any of  
14 those roads?

15 A. No, we did not.

16 Q. So what did y'all do next?

17 A. We then -- we -- I believe we returned to the police  
18 station, but I know that we ended up at Ms. Cunningham's  
19 residence that early morning.

20 Q. Would that be in the Oak Ridge neighborhood there in  
21 North Garland?

22 A. Yes.

23 Q. Did you meet with anyone there?

24 A. Yes, we met with Ms. Cunningham's sister.

25 Q. Would that be Evelyn Shelton?



1 A. Yes, it is.

2 Q. And did you obtain some information from her?

3 A. Yes, we did.

4 Q. Was this -- what type of information in general did  
5 you obtain from Ms. Shelton?

6 A. Well, we -- we asked Ms. Shelton for a recent  
7 photograph of Ms. Cunningham, a copy of her drivers license,  
8 or we were looking for any bank records that she might have,  
9 just anything that might help us identify Ms. Cunningham. We  
10 didn't know who she was or what she looked like at all, so we  
11 needed photographs.

12 Q. When you finished talking with Ms. Shelton, then  
13 what did y'all do?

14 A. We then returned to the police department I know for  
15 sure after that. It was -- we had been out most of the night  
16 by then. And we just returned to the police department to  
17 kind of re-group and reorganize.

18 Q. How long did you stay there?

19 A. Well, we were probably there -- I know I left the  
20 police department so that I could be at Richardson Motor  
21 Sports when they opened at 8 o'clock.

22 Q. Did Lieutenant Thompson go with you, or did you go  
23 by yourself?

24 A. Lieutenant Thompson did not go with me, but another  
25 detective did.

1 Q. Who was that?

2 A. That would have been Detective Brown.

3 Q. When you got there, was the Richardson Motor Sports  
4 open?

5 A. It was not open when we arrived, but that was -- we  
6 got there about 7:30 or 7:40. We knew that they were going  
7 to open at 8 o'clock.

8 Q. When they did open, did you have an opportunity to  
9 talk to some of the employees inside?

10 A. Yes, we did.

11 Q. Did you collect any items at that point, any pieces  
12 of paper or other physical items?

13 A. Yes, we did.

14 Q. Among other things, did you collect a receipt for a  
15 purchase that had been made the night before?

16 A. Yes, we did.

17 Q. Did you also recover some warranty papers with  
18 regards to that purchase?

19 A. That's correct. Yes, sir.

20 Q. And on those warranty papers, sir, did you see a  
21 name of a J. Isaac or a Jedidiah Murphy?

22 A. I believe the papers were filled out J. Isaac  
23 Murphy.

24 Q. Okay. When you obtained these papers with that name  
25 on them, did you do something with that name?

1           A.    I returned that information back to the police  
2 department and actually turned it over to Lieutenant  
3 Thompson.

4           Q.    What were you hoping to gain by that?

5           A.    We were hoping to be able to come up with a  
6 possible -- a possible suspect's name.

7           Q.    And did you come up with a possible suspect's name  
8 or a possible location for that suspect?

9           A.    Yes, we did.

10          Q.    Were you still at the Richardson Motor Sports or  
11 were you back at the police department or where were you when  
12 you got that information?

13          A.    We were back at the police department.

14          Q.    And did you come up with a last known address for a  
15 Jedidiah Murphy?

16          A.    Yes, we did.

17          Q.    And what was that address if you recall?

18          A.    Yes, I do recall. It was, I believe, 1718 Barclay  
19 Street in Richardson.

20          Q.    What did you do when you got that address?

21          A.    When we received that information, I immediately  
22 left the police department to go and locate that address and  
23 set up a surveillance.

24          Q.    Okay. What was the purpose of setting up a  
25 surveillance? What were you hoping to see?

1 A. Well, once again, we were looking for Ms.  
2 Cunningham's car. It hadn't been located yet. So that's the  
3 first thing that we were looking for is the car.

4 Q. Anyone else out there with you during the  
5 surveillance?

6 A. No. I left the police department by myself.  
7 Lieutenant Thompson was aware that I -- that I was en route  
8 over there, and he was in the process of locating another  
9 detective or other detectives to come and assist me.

10 Q. When you got over to Barclay, did you see Ms.  
11 Cunningham's car there?

12 A. No, I did not.

13 Q. About this time -- about what time did you arrive  
14 out there at Barclay that morning?

15 A. I think it was shortly before -- shortly before the  
16 lunch hour or shortly after the lunch hour. I think I had  
17 gone home and changed clothes and showered and get a bite to  
18 eat, so I think when I returned to the police department, it  
19 was shortly after the lunch hour.

20 Q. So you get out there to Barclay, you don't see the  
21 Honda. Is that the type of car that you were looking for?

22 A. Yes.

23 Q. Did you -- did you maintain your surveillance for a  
24 period of time?

25 A. I was only -- I was only on Barclay Street for about

1 10 minutes, 10 or 15 minutes.

2 Q. Uh-huh. Did you leave then?

3 A. Yes, I did.

4 Q. Why did you leave?

5 A. I was advised -- excuse me, I have a cold. Excuse  
6 me.

7 Q. Would you like a glass of water?

8 A. I'm okay. Excuse me.

9 I was advised over the radio that there were persons  
10 at Apollo Junior High School that had information about this  
11 case, so I immediately went to the -- to the junior high  
12 school.

13 Q. Now, before you left Barclay, had you tried to make  
14 contact with anybody inside the home?

15 A. No, I did not.

16 Q. So you then went to Apollo Junior High; is that  
17 right?

18 A. That's correct.

19 Q. And who did you meet over at Apollo Junior High  
20 School?

21 A. I met the school resource officer, and I also met  
22 two other individuals.

23 Q. What were their names?

24 A. Ms. Tonya Thorp and her daughter.

25 Q. That would be Ashley Johnson. Does that name sound

1 familiar?

2 A. Yes, her name was Ashley Johnson.

3 Q. Did you actually have some conversations with them?

4 A. Yes, I did.

5 Q. Without going into what was said at that point, did  
6 you stay there at the junior high school or what did you do  
7 as a result of talking to the two of them?

8 A. Well, after I met with those two, I stayed at the  
9 junior high school for, oh, probably only about 15 minutes or  
10 so and asked Ms. Thorp if she would come to the police  
11 department with her daughter where I could talk to them there  
12 and she agreed to do that.

13 Q. So Ms. Thorp and her daughter then went to the  
14 Garland Police Department, met with you and talked with you,  
15 correct?

16 A. That's correct.

17 Q. How long did y'all talk?

18 A. I think we were probably a total of maybe an hour  
19 and a half. We were there for a little while.

20 Q. Now, was it your understanding that Tonya Thorp was  
21 the sister of Jedidiah Murphy?

22 MS. BALIDO: I object to hearsay, based on  
23 hearsay, Judge.

24 THE COURT: Sustained. Rephrase the  
25 question.

1 MS. BALIDO: Ask the jury to disregard.

2 THE COURT: The Court denies -- in light of  
3 the Court's previous instruction.

4 Q. (By Mr. Davis) Let me just ask you then. How long  
5 did you stay there at the Garland Police Department talking  
6 with Tonya Thorp and Ashley Johnson?

7 A. I think we were there for about an hour and a half,  
8 maybe a couple of hours.

9 Q. Again, without going into what was said, did you do  
10 something after you talked with those two people? What was  
11 the next thing that you did after you finished talking with  
12 them?

13 A. Well, I asked both of them to provide a written  
14 statement about -- about what we had talked about and they  
15 both agreed to do that.

16 Q. All right. So you obtained a written statement from  
17 them. Then what did you do?

18 A. (No response)

19 Q. Did you stay at the police department, or did you go  
20 to some other location?

21 A. Well, I believe I would have met with my supervisor  
22 then just to advise him. There were some other detectives  
23 out in the field doing some other work, so I think we were  
24 waiting for them to return so that we could all once again  
25 get together and talk. They were doing some things I didn't

1 know what they were doing. I was doing some things that they  
2 didn't -- weren't aware of.

3 Q. Okay. Did you in fact meet with them there at the  
4 police department later?

5 A. Yes.

6 Q. And when you finished meeting with them, what did  
7 you do at that point?

8 A. Well, we were getting into the early evening hours  
9 then, and I had been -- been awake and been at work -- been  
10 working on the case for -- for about 18 hours I think, so  
11 I -- actually I was sent home after I got done taking to Ms.  
12 Thorp.

13 Q. When is the next time that you did anything on this  
14 case then, detective?

15 A. Well, I had gone home. I had been up all night and  
16 all day so I went to bed. And I got a call about 2 o'clock  
17 in the morning.

18 Q. This is going to be Friday, October 6th, correct?

19 A. Yes.

20 Q. 2 o'clock in the morning you're at home?

21 A. Yes.

22 Q. Who called you?

23 A. Once again, that would have been my supervisor,  
24 Lieutenant Thompson.

25 Q. Was it to discuss this particular case?



1 A. Yes, it was.

2 Q. Without going into what he said to you, what action  
3 did you take after you talked with your commander?

4 A. Well, he told me that some information --

5 MS. BALIDO: Objection, hearsay.

6 THE COURT: Sustained.

7 Q. (By Mr. Davis) Without going into what he said,  
8 just tell the members of the jury what did you actually do  
9 after you finished talking with him?

10 A. I returned to the police department.

11 Q. Did you stay there, or did you go someplace?

12 A. We left the police department, went somewhere.

13 Q. Where did you go to?

14 A. We went to an address in Edgewood, Texas.

15 Q. How many other -- how many other Garland police  
16 officers went with you to Edgewood?

17 A. I think there was a total of six of us.

18 Q. And where in Edgewood did you go to?

19 A. We went to a residence, to a home on Lamar Street.

20 Q. Did you meet any -- any law enforcement officers  
21 from Van Zandt County when you got to Edgewood?

22 A. Yes, we did.

23 Q. Where did you meet them?

24 A. We met them at a Dairy Queen on Highway 80.

25 Q. Do you remember whether or not Gary Rose who is a

1 Deputy Sheriff of Van Zandt County was one of those officers  
2 or not?

3 A. Yes, he was.

4 Q. Did you meet with him before you went to the  
5 residence there on Lamar?

6 A. Yes, we did.

7 Q. Okay. Did Deputy Rose actually accompany you over  
8 to the address on Lamar?

9 A. Yes, he did.

10 Q. When you got to Lamar, did you see anything that  
11 caught your attention, first of all, as you drove up to that  
12 residence?

13 A. Yes.

14 Q. What was that?

15 A. I saw Ms. Cunningham's car parked in front of the  
16 residence.

17 Q. Would this be the silver Honda Accord?

18 A. Thank you.

19 (Water handed to witness.)

20 A. Yes.

21 Q. (By Mr. Davis) If you would then, tell the jury  
22 what is the first thing then that happened once you and the  
23 other peace officers got to that location?

24 A. I was advised that Mr. Murphy was inside the  
25 residence.

1 MS. BALIDO: Objection based on hearsay.

2 THE COURT: Overruled.

3 A. And I then proceeded into the residence where I  
4 personally observed Mr. Murphy.

5 Q. (By Mr. Davis) Where was Mr. Murphy when you first  
6 saw him?

7 A. He was in a bedroom at the rear of the residence.

8 Q. Was he in there by himself, or were other law  
9 enforcement officials there with him?

10 A. There was at least one other law enforcement  
11 official there with him.

12 Q. Okay. Do you know whether or not any other law  
13 enforcement officers had spoken with Mr. Murphy prior to the  
14 time that you met with him?

15 A. Yes.

16 Q. Did you have an opportunity to talk with Mr. Murphy,  
17 also?

18 A. Yes, I did.

19 Q. Again, physically where in the bedroom was he?

20 A. When I first walked into the room, he was seated --  
21 seated on the bed.

22 Q. Was -- was he clothed?

23 A. I believe he had on a pair of shorts.

24 Q. Was he handcuffed?

25 A. Yes, he was.

1 Q. Did you have your gun out or drawn when you first  
2 went in there to talk with him?

3 A. No, I did not.

4 Q. Was Mr. Murphy awake?

5 A. Yes, he was.

6 Q. Did he appear to be alert?

7 A. Yes, he did.

8 Q. Did you actually go up to where he was then?

9 A. I did.

10 Q. How close to Mr. Murphy were you then?

11 A. I was probably about a foot or maybe two feet away  
12 from him.

13 Q. Did you have an opportunity to observe his  
14 appearance and his demeanor at that point?

15 A. Yes, I did.

16 Q. How would you describe his demeanor?

17 A. He was just very quiet.

18 Q. Did you observe whether or not he was intoxicated at  
19 that point?

20 A. I do not believe he was intoxicated at that time.

21 Q. In your 20 plus years experience with the Garland  
22 Police Department, have you had occasions to deal with  
23 individuals who you knew were intoxicated?

24 A. Yes, I have.

25 Q. Few or many occasions?

1 A. Many occasions.

2 Q. Have you been -- have you received training to spot  
3 signs of intoxication of suspects?

4 A. Yes, I have.

5 Q. First of all, what were some of the signs that you  
6 were going to look for that morning?

7 A. Well, I looked to make sure that his balance was  
8 stable. I would look in his eyes to see if his eyes were  
9 bloodshot or watery. I would also see if I could smell  
10 alcohol on or about his person.

11 Q. As you were there with him, did you observe any  
12 indication that Mr. Murphy was intoxicated?

13 A. No, I did not.

14 Q. In your experience as a police officer, have you had  
15 to deal with people who you knew were under the influence of  
16 drugs?

17 A. Yes.

18 Q. Again, what would some of the common signs be if  
19 somebody were under the influence of drugs?

20 A. Well, some of those signs are similar to alcohol.  
21 Their eyes may be bloodshot or watery. Their balance may be  
22 unstable or speech may be slurred.

23 Q. Was Mr. Murphy exhibiting any signs of being under  
24 the influence of drugs?

25 A. No, he was not.

1 Q. What's the first thing that you did when you came in  
2 contact with Mr. Murphy then?

3 A. I identified myself. Lieutenant Thompson was with  
4 me, and Commander Lay was also with me. I identified them.

5 Q. Now, were you in some police uniform or were you  
6 wearing a suit similar to the one that you're wearing now?

7 A. Well, I was not in a police uniform, but I was also  
8 not wearing a neck tie. I -- I was probably in just a pair  
9 of slacks and a shirt.

10 Q. So you identify yourself to Mr. Murphy; is that  
11 correct?

12 A. Yes.

13 Q. Did he appear to understand what you were saying to  
14 him?

15 A. Yes, he did.

16 Q. Did he acknowledge you in any fashion verbally at  
17 that point?

18 A. I don't recall that he did.

19 Q. What's the next thing that you said or did?

20 A. I would have advised him that he was under arrest  
21 and offered Miranda warnings to him.

22 Q. Now, the Miranda warnings that you gave to Mr.  
23 Murphy, is it your practice to read those warnings off of a  
24 card or do you give those warnings by memory to suspects?

25 A. I give them by memory.

1 Q. Did you do that that morning?

2 A. Yes, I did.

3 Q. Would you please tell the members of the jury the  
4 warnings that you gave to Mr. Murphy there that morning.

5 A. Yes, I would have told Mr. Murphy that you have the  
6 right to remain silent, not make any statement to me. That  
7 if you do make any statement, that statement may and probably  
8 will be used as evidence against you at your trial. You have  
9 the right to have an attorney present to counsel with you  
10 prior to and during any questioning. And if you cannot  
11 afford an attorney, the State would appoint an attorney to  
12 counsel with you. You also have the right to terminate this  
13 interview at any time. I would then ask him if he understood  
14 those rights.

15 Q. Okay. Are those the warnings that you gave to Mr.  
16 Murphy that day?

17 A. Yes.

18 Q. Did you in fact ask Mr. Murphy if he understood  
19 those rights?

20 A. I did.

21 Q. What response did he give to you?

22 A. He verbally said "yes" and shook his head yes.

23 Q. While you were reading the warnings or giving the  
24 warnings to him, was he looking at you?

25 A. He wasn't making direct eye contact with me, but he

1 was looking up.

2 Q. All right. Did he appear to be listening to you?

3 A. Yes, he did.

4 Q. After he told you that he understood his rights, at  
5 any point did he tell you that he did not want to talk with  
6 you?

7 A. No, he did not.

8 Q. At any point did he tell you that he wanted to  
9 terminate the interview and have an attorney present?

10 A. No, he did not.

11 Q. What's the next thing that occurred then?

12 A. I asked Mr. Murphy one question. I asked him if he  
13 knew where the credit cards were.

14 Q. What credit cards were you referring to?

15 A. I was referring to Ms. Cunningham's credit cards.

16 Q. At the time that you asked that question of Mr.  
17 Murphy, did you know where Ms. Cunningham's credit cards  
18 were?

19 A. No, I did not.

20 Q. Did the defendant respond to you?

21 A. Yes, he did. He said that they were --

22 MS. BALIDO: Judge, we're going to object to  
23 anything that the defendant said based on our previous  
24 objection.

25 THE COURT: The Court recalls the objection.



1 It's again overruled.

2 You may answer.

3 A. Yes, he did respond and told me that the credit  
4 cards were outside in her car.

5 Q. (By Mr. Davis) Did someone subsequently look inside  
6 the car to determine if her credit cards were in -- in Ms.  
7 Cunningham's car?

8 A. Yes.

9 Q. Were the cards later found in her car?

10 A. Yes, I believe they were.

11 Q. Did you ask anything more of the defendant at that  
12 time?

13 A. No, I did not.

14 Q. Did you continue talking with the defendant at that  
15 point?

16 A. No, I did not.

17 Q. What did you do then?

18 A. Mr. Murphy was then -- he was removed from the  
19 residence. He was in my custody at that time, and he was  
20 transported to the Edgewood Police Department.

21 Q. At some point did you go to a location at a creek  
22 there in Edgewood?

23 A. Yes, we did.

24 Q. At what point did do you that?

25 A. We did that after we left the Edgewood Police

1 Department.

2 Q. So as I understand, you finished your interview with  
3 the defendant, you then went to the Edgewood Police  
4 Department. Was the defendant transported over there, also?

5 A. Yes.

6 Q. Purpose being what?

7 A. The purpose for that was so that he could meet with  
8 the Magistrate and be arraigned.

9 Q. Did the Magistrate appear there after a certain  
10 period of time?

11 A. Yes.

12 Q. Where was Mr. Murphy while you were waiting for the  
13 Magistrate to arrive there?

14 A. He would have been seated in the back seat of one of  
15 our police cars.

16 Q. On the way over to the police department, did you  
17 have any more conversations with Mr. Murphy?

18 A. No, we did not.

19 Q. Was he discussing anything or making any statements  
20 to you on the way over?

21 A. No, he did not.

22 Q. When you got there and Mr. Murphy remained in the  
23 car waiting for the Magistrate to get there, did a police  
24 officer stay in the car with him or was he allowed to sit in  
25 the car by himself?

1       A.    I think it was a little bit of both actually.  There  
2       was a period of a few minutes that myself and my partner were  
3       seated in the car.  I know I got out to talk with one of the  
4       other police officers that was there.  I think my partner  
5       stayed in the car the whole time.

6       Q.    Okay.  Did y'all make any attempt to question him  
7       there at the police department before the Magistrate got  
8       there?

9       A.    No, we did not.

10      Q.    After the Magistrate got there, did an arraignment  
11      actually take place?

12      A.    Yes.

13      Q.    Did you witness that arraignment?

14      A.    Yes, I did.

15      Q.    Have you witnessed other arraignments in the past?

16      A.    Yes, I have.

17      Q.    Did you pretty much know what to expect at that  
18      point?

19      A.    Yes, I did.

20      Q.    Do you know a Judge Ozelle Wilcoxson?

21      A.    Yes.

22      Q.    Did Judge Wilcoxson read the Miranda rights or  
23      warnings to the defendant in this case?

24      A.    Yes, she did.

25      Q.    Now, I believe the evidence is that he was arraigned

1 on a charge of murder down there in Van Zandt County that  
2 day. Was that in reference to the death of Bertie  
3 Cunningham? Is that the murder that we're talking about?

4 A. Yes, it is.

5 Q. Was he also arraigned on a credit card abuse case  
6 that you had a warrant for?

7 A. Yes.

8 Q. Were you able to observe the defendant during the  
9 arraignment?

10 A. Yes, I did.

11 Q. Was there anything unusual about his actions while  
12 the Judge was giving him his Miranda warnings?

13 MS. BALIDO: Judge, I'm going to object to the  
14 continual leading of this witness.

15 THE COURT: Objection is overruled.

16 A. No, I did not observe anything unusual.

17 Q. (By Mr. Davis) How would you describe his demeanor  
18 then during the time he was being arraigned?

19 A. He was still very quiet, very still and very quiet.

20 Q. How long did the arraignment take?

21 A. It probably took about 20 minutes once she got there  
22 and we started.

23 Q. And where did you go following the arraignment then?

24 A. We left the police department and drove to the creek  
25 area.

1 Q. Who was with you?

2 A. Mr. Murphy was in the car, and my partner, Detective  
3 Tooke, was also in the car.

4 Q. How long did it take you to get from the police  
5 department over there to the creek location?

6 A. Probably less than 10 minutes.

7 Q. Did you or Detective Tooke make any effort to  
8 question the defendant on the way over to the creek?

9 A. No, we did not.

10 Q. Did he make any statements to you on the way over  
11 there?

12 A. No, he did not.

13 Q. What was his demeanor on the way to the creek then?

14 A. He was still once again continuing to be -- he was  
15 real still and very quiet.

16 Q. When you finally got to the creek, tell the members  
17 of the jury what occurred at that point.

18 A. Well, the purpose for going to the creek was we  
19 had -- I knew that there might possibly still be a murder  
20 weapon somewhere. I wanted --

21 Q. What type -- I'm sorry -- what type of murder weapon  
22 were you looking for?

23 A. I was looking for a pistol, a handgun.

24 Q. Any particular caliber?

25 A. Yes, it was a .22 caliber. And Mr. Murphy had -- I

1 had advised him the reason that we were returning to the  
2 creek was to -- for him to point out an area where he may  
3 have thrown the gun. But when we got to the -- when we got  
4 to the creek area and I asked Mr. Murphy to get out of the  
5 car to show us where he had thrown the gun, he refused to get  
6 out of the car, would not do that.

7 Q. Was any effort made to try to find the pistol?

8 A. Yes.

9 Q. What did you do in that regard?

10 A. Well, that night we hired a diver to go into the  
11 creek to search for the gun that night.

12 Q. Okay. Did you yourself try to find the gun out  
13 there by the creek with -- when the defendant was out there  
14 with you?

15 A. No, not that night.

16 Q. How long did you, Detective Tooke, and the defendant  
17 then stay at that location at the creek?

18 A. We were probably only there for 5 or 10 minutes with  
19 him.

20 Q. Where did you go once you left the creek?

21 A. We returned directly to the Garland Police  
22 Department from there.

23 Q. When you say "we," would that be you, Detective  
24 Tooke, and the defendant; is that right?

25 A. Yes.

1 Q. Who is driving?

2 A. Detective Tooke was driving.

3 Q. Where are you sitting in the car?

4 A. I was seated in the front seat.

5 Q. And the defendant?

6 A. He was seated right behind me in the rear passenger.

7 Q. How long did it take for you to get from Edgewood to  
8 the Garland Police Department?

9 A. It's about a 45-minute drive, maybe -- maybe just a  
10 little bit more than that.

11 Q. Anything unusual occur on the way from Edgewood to  
12 the Garland Police Department?

13 A. No.

14 Q. Did you or Detective Tooke make any effort to  
15 question the defendant on the way to the police department?

16 A. No, we did not.

17 Q. Defendant's demeanor on the way back was what?

18 A. Very still and very quiet the entire time.

19 Q. When you arrived at the Garland Police Department,  
20 what did you do with the defendant?

21 A. We went to the jail area, to the book-in area to  
22 process papers and book him into the jail.

23 Q. Now, describe, if you will, the book-in process. If  
24 a suspect is brought into the Garland Police Department to be  
25 booked in, what would be done with him?

1       A.   Well, they ascertain personal information, name and  
2   address, phone numbers, next of kin information. They remove  
3   any jewelry from the -- from the person that's being booked  
4   in. They take clothing away from them and give them jail  
5   clothes to wear. They ascertain some medical history and  
6   just some questions at the book-in -- at the book-in area  
7   that they ask.

8       Q.   When the defendant went through the book-in process  
9   and was asked for this information, was he able to provide  
10  that information to the jail personnel?

11      A.   Yes, he did.

12      Q.   Was there anything unusual about his book-in process  
13  then?

14      A.   No, there wasn't.

15      Q.   You've mentioned something about medical history.  
16  If a prisoner is brought into the Garland jail and he  
17  requires medical attention for whatever reason, what would be  
18  the procedure at that point? Would you go ahead and place  
19  him into your jail, or would you do something else with him?

20      A.   No, actually if he would request -- any prisoner  
21  that comes in and requests medical attention, we would  
22  immediately take them to the emergency room at the local  
23  hospital so that they could see a doctor.

24      Q.   Now, was Mr. Murphy taken to an emergency center  
25  that morning or was he processed in?



1 A. He was processed in.

2 Q. Do you remember whether or not he asked for any sort  
3 of medical attention at that point or gave a history of a  
4 medical problem at that point?

5 A. None that I'm aware of.

6 Q. After the book-in procedure was finished -- and  
7 approximately how long did that take?

8 A. That usually takes about 20 minutes, maybe 30  
9 minutes, depending on how busy they are.

10 Q. Where was the defendant taken then?

11 A. He was then taken to another area of the police  
12 department. It's an interview area. It's located on the  
13 second floor of the police department.

14 Q. Approximately what time that morning then did the  
15 defendant arrive in the interview room?

16 A. He was in the -- around 8 o'clock.

17 Q. The interview room, if you could, just describe it  
18 for the members of the jury.

19 A. It's a small room. It's about 12 feet by 12 feet,  
20 maybe just a little bit bigger or a little bit smaller.  
21 There's no -- the walls are just painted plain white.  
22 There's very little furniture in there. There's a small  
23 desk, a couple of chairs to be seated on. No pictures on the  
24 wall. Just kind of a -- a very plain room really.

25 Q. What did y'all do once he got up there?

1 A. Well, the very first thing we would do in the  
2 interview room is once again give the person that we're  
3 talking to their Miranda warning.

4 Q. What's the purpose of doing that?

5 A. Well, this time the Miranda warning was given not  
6 verbally, but it was given in writing.

7 Q. Did you use some sort of printed form, or how did  
8 you do that?

9 A. Yes, we have a printed standard form that we give to  
10 all persons that we interview, the Miranda sheet. It's the  
11 same -- it's printed and --

12 MR. DAVIS: May I approach, Your Honor.

13 THE COURT: You may.

14 Q. (By Mr. Davis) Detective Myers, if you would please  
15 look at State's Exhibit Number 41. Do you recognize this  
16 document, sir?

17 A. Yes, I do.

18 Q. Is this the printed Miranda warnings that you gave  
19 to Jedidiah Murphy there on October 6th of the year 2000?

20 A. Yes, it is.

21 Q. Now, it has the Miranda warnings printed; is that  
22 correct?

23 A. Yes.

24 Q. It also has the date and the time actually  
25 handwritten in, correct?

1 A. That's correct.

2 Q. Does it contain your name of M.J. Myers as well as  
3 that of the defendant, Jedidiah Murphy?

4 A. Yes, it does.

5 Q. Is there a place on that document for the signature  
6 of the suspect in this case Jedidiah Murphy?

7 A. Yes, there is.

8 Q. Is his signature appearing on that document, sir?

9 A. Yes, it does.

10 MR. DAVIS: Your Honor, at this time for all  
11 purposes the State will offer State's Exhibit Number 41.

12 (State's Exhibit No. 41 offered)

13 MR. BYCK: Judge, we'd object and I'd like to  
14 be heard outside the presence of the jury.

15 THE COURT: Sheriff, if you'd retire the jury,  
16 please.

17 THE BAILIFF: Yes, sir. All rise.

18 (Jury excused from courtroom.)

19 THE COURT: The jury is being excused from the  
20 courtroom at this time.

21 Detective, you may be seated.

22 Mr. Murphy, counsel, visitors in the gallery, you  
23 may be seated.

24 Defense may proceed.

25 MS. BALIDO: Judge, at this time, pursuant to

1 pretrial motions filed and based on the testimony of the  
2 hearing before the trial and the testimony up to this point,  
3 we would ask for a ruling on our Jackson v. Denno hearing in  
4 regard to the voluntariness of the confession and whether or  
5 not it -- it submits to Miranda or comports to Miranda. In  
6 addition to what we've laid out in our -- in our motion, we  
7 would also say that this -- anything that came out of or came  
8 after the oral confessions that were admitted into evidence  
9 over our objection was fruit to the poisonous tree and  
10 therefore we would add that as one of our objections to any  
11 written statements that may come into evidence. But aside  
12 from that, we would object on that -- on that basis at this  
13 point and also there's no reason to believe that Mr. -- or  
14 Detective Myers' testimony is going to be any different as to  
15 the rest of it, so if you'd like me to, I can go ahead and  
16 object to the actual statements.

17 THE COURT: Go ahead.

18 MS. BALIDO: Judge, we would -- we would  
19 include our objection to all the written statements that were  
20 made in this case based on Jackson v. Denno, based on  
21 Miranda, based on 38.22, on Article 1, Section 9, 10, 13, and  
22 19 of the -- I think just 10, 13, and 19 of the Texas  
23 Constitution, Article -- excuse me, the 5th, 6th, 8th, and  
24 14th Amendments to the United States Constitution, and  
25 Article 38.22 of the Texas Code of Criminal Procedure.

1 THE COURT: Based upon the status of the  
2 record as it now exists, I know not what statements were  
3 ultimately given. May we have a short proffer as to after  
4 the warnings what was subsequently done by defendant?

5 MR. DAVIS: Yes, sir. What was done -- I  
6 believe the prior testimony is, Your Honor, that they -- the  
7 detective and the defendant engaged in short conversation  
8 about the possible abduction of Ms. Cunningham, that the  
9 defendant agreed to go with Detective Myers --

10 THE COURT: I recall that portion. Was any  
11 type of a statement produced in writing signed by the  
12 defendant?

13 MR. DAVIS: The detective and the defendant  
14 rode around for about an hour and a half and then returned to  
15 the interview room where the written statement itself which  
16 is State's Exhibit Number 47 was actually written by the  
17 defendant so --

18 THE COURT: May we proceed with that portion  
19 just before I dictate my decision into the record?

20 MR. DAVIS: Your Honor, I believe that we  
21 previously have gone into that matter.

22 THE COURT: Where is -- where is the  
23 document?

24 MR. DAVIS: The document is down with the  
25 court reporter, and I'm now handing that to the Court.

1 MS. MILLER: Judge, that was the hearing that  
2 we had on Friday.

3 THE COURT: I recall that. Is this the  
4 statement about which the defense makes objection?

5 MS. BALIDO: Yes, Your Honor.

6 THE COURT: State's Exhibit Number 47?

7 Anything further from either side before I dictate  
8 my findings into the record?

9 MR. DAVIS: Nothing from the State, Your  
10 Honor.

11 MS. BALIDO: Nothing from the defense, Your  
12 Honor, at this point.

13 THE COURT: The Court finds after a hearing  
14 mandated by the United States Supreme Court in Jackson v.  
15 Denno, found at 84 Supreme Court, page 1774, and following,  
16 and also pursuant to the United States Supreme Court dictates  
17 in Miranda versus Arizona, found at 86 Supreme Court 1602,  
18 the Court finds beyond a reasonable doubt and without regard  
19 to the truth or falsity of the statement identified as  
20 State's Exhibit Number 47, that the defendant in this matter,  
21 Jedidiah Isaac Murphy, was warned of his rights as is  
22 required by Miranda versus Arizona on numerous occasions by  
23 varying and differing peace officers involved with this  
24 matter, that the defendant did knowingly waive his right to  
25 an attorney and did freely and voluntarily without being

1 induced by compulsion, threats, promises, persuasions, make  
2 and sign a statement in writing which is specifically  
3 identified as State's Exhibit Number 47.

4 I further find that especially as relates to the  
5 warnings given by Garland Detective Myers, that the  
6 defendant's alleged mental condition by the ingestion of  
7 alcohol or cannabis was not impaired in any significant  
8 portion such that he did not sufficiently appreciate the  
9 consequences of the warning. I therefore find and rule as a  
10 matter of law that the State's Exhibit Number 47, the  
11 reported statement by the defendant, shall be presented or  
12 admitted into evidence, should State's strategy so dictate.

13 MS. BALIDO: Judge, just for housekeeping  
14 purposes, we will make an additional objection if the later  
15 statements are coming into evidence as well.

16 THE COURT: All right.

17 MS. BALIDO: But it will just be kind of short  
18 like this so we won't have to take a break for the jury.

19 THE COURT: Sheriff, may we have the jury back  
20 in?

21 Let the record reflect the jury is returning to the  
22 courtroom at this time.

23 (Jury returned to courtroom.)

24 THE COURT: Jury may be seated.

25 Mr. Murphy, counsel, visitors in the gallery,

1 detective, you may be seated.

2 Consistent with the Court's ruling, you may  
3 continue.

4 MR. DAVIS: Thank you.

5 Q. (By Mr. Davis) Now, State's Exhibit Number 41, the  
6 printed warnings form, what is the title of that document?

7 A. It is titled "Warning to be Given Before Taking Any  
8 Oral or Written confession."

9 Q. Before you read any further --

10 MR. DAVIS: Judge, formally has this document  
11 been admitted?

12 THE COURT: Admitted.

13 (State's Exhibit No. 41 admitted)

14 MR. DAVIS: Thank you.

15 Q. (By Mr. Davis) I'm sorry. Would you please give us  
16 that title again?

17 A. It's titled "Warning to be Given Before Taking Any  
18 Written or Oral Confession."

19 Q. Is this a printed form that's used by the Garland  
20 Police Department?

21 A. Yes, it is.

22 Q. And underneath that, would you please read the first  
23 portion underneath the title? What does that contain?

24 A. It contains the date and time and my name and the  
25 defendant's name.



1 Q. The date being what?

2 A. It reads on October the 6th -- I'm sorry, on the 6th  
3 day of October.

4 Q. And what is the time that's on that document?

5 A. 8:52 a.m.

6 Q. And that time would indicate what?

7 A. That would be the time of day that Mr. Murphy signed  
8 this document.

9 Q. And again, your name and the defendant's name  
10 appear. Could you please read to the members of the jury the  
11 Miranda warnings that are contained on State's Exhibit Number  
12 41.

13 A. Yes. It says, number one, I have the right to have  
14 a lawyer present to advise me either prior to or during any  
15 questioning.

16 Number two, if I am unable to employ a lawyer, I  
17 have the right to have a lawyer appointed to counsel with me  
18 prior to or during any questioning.

19 And, number three, I have the right to remain silent  
20 and not make any statement at all and that any statement that  
21 I make may and probably will be used as evidence against me  
22 at my trial.

23 Number four, I have the right to terminate the  
24 interview at any time.

25 Q. And what follows after those warnings?

1       A.    It says, "I understand all of the above explained  
2 rights," and it is signed Jedidiah Murphy.

3       Q.    Okay. Now, the Jedidiah Murphy that signed that  
4 document, State's Exhibit Number 41, do you see him here in  
5 the courtroom this afternoon?

6       A.    Yes, I do.

7       Q.    Please point him out and what he's wearing and where  
8 he's sitting.

9       A.    He's in a dark colored suit with a dark colored  
10 tie. He's wearing glasses seated right here.

11               MR. DAVIS: Your Honor, may the record please  
12 reflect this witness has identified the defendant in open  
13 court.

14       Q.    (By Mr. Davis) How did you present that document to  
15 Mr. Murphy? Did you sit down and read out loud the  
16 contents? Did you give the document to him? Just tell the  
17 members of the jury how he actually learned the contents of  
18 State's Exhibit Number 41.

19       A.    I would present this document to him, advise him  
20 what the document was, that it was a Miranda warning sheet.  
21 I would ask him then to read it, ask him to make sure that he  
22 understood it. Tell him that if there was something on the  
23 sheet that he did not understand, to tell me what he didn't  
24 understand and I would try to explain it to him.

25       Q.    Did it appear to you that Mr. Murphy did in fact

1 read State's Exhibit Number 41?

2 A. Yes, he did.

3 Q. What indications did you have that he was reading?

4 A. Well, he held it in his hand. I could see that his  
5 eyes were moving across the paper. He never indicated to me  
6 that he didn't understand it. And I believe that he read the  
7 entire document.

8 Q. Did he ever have any questions for you about any the  
9 contents of State's Exhibit Number 41?

10 A. No, he did not.

11 Q. Did he ever indicate to you that he had a problem  
12 with any of those warnings or rights?

13 A. No, he did not.

14 Q. Did he ever indicate to you that he wanted to  
15 terminate the interview with you?

16 A. No, he did not.

17 Q. And he then signed State's Exhibit Number 41 in your  
18 presence; is that right?

19 A. That's correct.

20 Q. After he signed the document, did y'all begin to  
21 have a discussion?

22 A. Yes, we did.

23 Q. And in general what was the topic of your  
24 discussion?

25 A. Well, the first thing that I said to Mr. Murphy was

1 that we needed to try and ascertain the abduction location.  
2 He said that he -- he didn't want to hide anything, that he  
3 wanted to cooperate with us, and that he would answer any  
4 questions that I had for him.

5 Q. Now, did y'all have a short discussion about that  
6 subject there at the police station?

7 A. Yes, we did.

8 Q. A few minutes later did you leave the police station  
9 with Mr. Murphy?

10 A. Yes, we did.

11 Q. Did any other police officer go with you from the  
12 station?

13 A. Yes, Detective Tooke did.

14 Q. Where did the three of you go?

15 A. We drove back to the area of North Garland. We --  
16 the purpose for doing that was we were trying to locate an  
17 area where -- that Mr. Murphy would recognize as being the  
18 abduction location.

19 Q. How did you know where to go to?

20 A. Well, he had told us previously that he had been at  
21 a bar, a sports bar located in North Garland.

22 Q. Do you remember the name of that bar?

23 A. Yes, I believe it was called Bleachers.

24 Q. Now, you said that that bar is in the City of  
25 Garland; is that correct?

1 A. Yes, it is.

2 Q. Is Bleachers in Dallas County, Texas?

3 A. Yes, it is.

4 Q. Did you go past that location?

5 A. Yes, we did.

6 Q. Did Mr. Murphy have any reaction when you went by  
7 that location?

8 A. Yes, he did. Detective Tooke was driving the car.  
9 And as we drove past the location, which I already knew where  
10 it was, I just wanted to see if Mr. Murphy was going to  
11 identify that site or not at that address, and he did. He  
12 said, "hey, you just drove past it." So I knew he knew where  
13 he was talking about, the location he was talking about.

14 Q. Now, these other locations that you went to, were  
15 they all in the City of Garland?

16 A. Yes.

17 Q. How many possible locations did you go with Mr.  
18 Murphy to that morning?

19 A. Well, we went to every major intersection -- every  
20 intersection that would have been along these north-south  
21 arteries of Jupiter Road. And we also included Shiloh Road  
22 and went over to Plano Road, any route that we thought that  
23 Ms. Cunningham may have driven from the mall to her  
24 residence.

25 Q. Okay. For those who aren't familiar with that area

1 now, you have Plano Road, and then to the east you have  
2 Jupiter Road, correct?

3 A. Yes.

4 Q. And then to the east of Jupiter Road you have Shiloh  
5 Road, all of them running north and south; is that correct?

6 A. Those are all the main north-south arteries, yes.

7 Q. So of the major east-west arteries that you went to  
8 that day would have been what?

9 A. They would have been Belt Line Road, Buckingham  
10 Road. We went as far south as Walnut Street, a big east-west  
11 street in Garland.

12 Q. Was Mr. Murphy able to give you a precise location  
13 for the abduction after driving around with him that morning?

14 A. No, he did not.

15 Q. Did he give you any indication that some of them may  
16 have been possible sites of the abduction?

17 A. He pointed out a couple of areas as we were going by  
18 or as we stopped that he recognized, but he never said that  
19 this is -- this is the spot.

20 Q. Uh-huh. Now, all of the locations that you went to  
21 that morning with Mr. Murphy, were all of those locations in  
22 Dallas County, Texas?

23 A. Yes, they were.

24 Q. So I take it were you successful in finding a  
25 specific location for the abduction or not that morning?

1 A. We did not.

2 Q. Okay. Did you return Mr. Murphy to the police  
3 station?

4 A. Yes, we did.

5 Q. About how long were you out with him that morning  
6 before you got back to the station?

7 A. I think we were out for about an hour and a half.  
8 We could have been out maybe just a little bit more, a little  
9 bit less, but roughly about an hour and a half.

10 Q. Where did you take Mr. Murphy once you got back to  
11 the police station?

12 A. We returned to the interview room on the second  
13 floor of the police department.

14 Q. Same room?

15 A. Yes, it's the same room we were in previously.

16 Q. What did you do when you got back up there?

17 A. I asked Mr. Murphy if he would be willing to sign a  
18 statement, voluntary written statement.

19 Q. And what did he say?

20 A. He immediately said that he would.

21 Q. Now, what procedure do you personally use to take a  
22 voluntary written statement? What's your practice?

23 A. Well, it's a -- it's a printed -- part of it is a  
24 printed form. Present it to the person, tell them that this  
25 is a statement in their own words, in their own handwriting,

1 they can -- they can write whatever they want. It's just --  
2 it's just their account of what happened.

3 Q. Do you allow suspects to hand write the statement  
4 themselves, or do you normally write it out for them?

5 A. I would always let the person write the statement if  
6 they're able to.

7 Q. And what would be a situation where you would feel  
8 that you couldn't let a suspect write it out himself?

9 A. I've had a situation a couple of times in my career  
10 where a person would indicate to me that they're just not  
11 able to write, they're not able to read or not able to  
12 write. And in those circumstances we make some other  
13 arrangements to obtain a written statement. Sometimes I  
14 would write it. Sometimes I would type it.

15 Q. In this case did Mr. Murphy indicate that he wanted  
16 to hand write his own statement?

17 A. Yes, he did.

18 Q. While a suspect is actually writing a statement, do  
19 you stay with him?

20 A. No, I would always leave the person alone while  
21 they're writing.

22 Q. What's the purpose of doing that?

23 A. Well, there's a couple of different reasons. It's  
24 really to help them relax, and I don't want them to be able  
25 to say that I in any way intimidated them to write their



1 statement. So I always leave them alone when they're  
2 writing.

3 Q. In this case did you use the preprinted form used by  
4 the Garland Police Department?

5 A. Yes.

6 Q. You let him hand write it himself; is that correct?

7 A. That's correct.

8 Q. Did you allow the defendant to hand write it alone  
9 in the interview room?

10 A. Yes.

11 Q. What instructions did you give to him then before he  
12 began writing the statement?

13 A. Well, there's a -- there is another warning similar  
14 to the Miranda warning on top of the printed form. I wanted  
15 to make sure that he understood that before we started  
16 writing, so I went over that with him.

17 Q. How did you go over that with him?

18 A. I just once again handed that form to him, asking  
19 him to read it, asking him if he had any questions about any  
20 of that information, asking him if he understood that.

21 Q. Did it appear to you that Mr. Murphy read that  
22 portion of the preprinted form?

23 A. Yes, it did.

24 Q. Did he have any questions for you?

25 A. No, he did not.

1 Q. Did he make any comments that he didn't understand  
2 that?

3 A. No, he did not.

4 Q. Did he give any indications that he didn't want to  
5 give you a written statement?

6 A. No, he did not.

7 Q. So what did you do?

8 A. I then left him alone with the forms, let him  
9 write -- write his statement out.

10 Q. How long did he -- did he take to write out a  
11 statement?

12 A. I think it was probably a total of probably 20  
13 minutes, maybe 30.

14 Q. Were there any times during that period where you  
15 came into the room to check on his progress?

16 A. I think I stuck my head in there one time. I  
17 cracked the door open. It's what I would normally do with  
18 anyone that was in there. I don't know if they're finished  
19 or not. I'm not with them. So I just cracked the door open,  
20 ask them if they are finished. If they say they are, I would  
21 go in. If they say they're not, then I would close the door  
22 and leave them alone.

23 Q. At a certain point did he indicate that he was  
24 finished?

25 A. Yes, he did.

1 Q. What did you do at that point?

2 A. I would then return into the room with him. I took  
3 the statement from him. I read the statement. I would ask  
4 another person then to come into the room to witness the --  
5 Mr. Murphy's signature onto the statement.

6 Q. Now, is the suspect given an opportunity to make  
7 changes or additions or deletions to his statement before he  
8 has to sign it?

9 A. Yes.

10 Q. Was Mr. Murphy given that opportunity?

11 A. Yes, he was.

12 Q. Did he in fact sign the voluntary statement?

13 A. Yes, he did.

14 Q. Did you witness his signature?

15 A. Yes, I did.

16 Q. Who else witnessed his signature?

17 A. Detective Tooke.

18 MR. DAVIS: May I approach, Your Honor.

19 THE COURT: You may.

20 Q. (By Mr. Davis) Detective Myers, looking at State's  
21 Exhibit Number 47, if you will review that document and tell  
22 me whether or not this is the voluntary written statement  
23 that you took from the defendant, Jedidiah Isaac Murphy, on  
24 October 6th, the year 2000?

25 A. Yes, sir, it is.

1 Q. How many pages?

2 A. It consists of five pages.

3 Q. Is the defendant's signature on each and every page?

4 A. Yes, it is.

5 Q. Would that be the same for your signature and that  
6 of Detective Tooke?

7 A. Yes.

8 Q. Each page, does it have the same preprinted material  
9 on it?

10 A. Yes, it does.

11 Q. Does each page contain the Miranda warnings that  
12 you've just told this jury about?

13 A. Yes, it does.

14 Q. Now, prior to the time that Jedidiah Murphy signed  
15 this document, sir, had you threatened him in any fashion in  
16 order to have him produce this written statement for you?

17 A. No, sir.

18 Q. All right. Had you compelled him in any way to sign  
19 that statement?

20 A. No, I did not.

21 Q. Had you made any promises whatsoever to him before  
22 he signed this statement?

23 A. No, I did not.

24 Q. Did Jedidiah Isaac Murphy freely and voluntarily  
25 sign and execute State's Exhibit Number 47?

1 MS. BALIDO: Judge, I'm going to object that  
2 as being an ultimate fact question for the jury.

3 THE COURT: Overruled.

4 A. Yes, he did.

5 MR. DAVIS: Your Honor, at this time we would  
6 offer State's Exhibit Number 47 for all purposes.

7 (State's Exhibit No. 47 offered)

8 MS. BALIDO: Judge, we'd object on the basis  
9 of our previous objection.

10 THE COURT: The Court recalls the previous  
11 objections. They are again overruled. Admitted.

12 (State's Exhibit No. 47 admitted)

13 Q. (By Mr. Davis) At the top of that voluntary  
14 statement form, again is there a place for the date?

15 A. Yes.

16 Q. And is that October 6th of 2000?

17 A. Yes, it is.

18 Q. Is there a place for the time?

19 A. Yes, there is.

20 Q. And what time is indicated on State's Exhibit Number  
21 47?

22 A. 11:30 a.m.

23 Q. Does that indicate the time that you began the  
24 process with him, or is that the time that he actually signed  
25 State's Exhibit Number 47?

1 A. I think this is the time that he signed it.

2 Q. There is a place -- would that be 217 North Fifth  
3 Street which is the location for the police department?

4 A. Yes.

5 Q. Okay. Place for his name, as well as his age, and  
6 his home address; is that also right?

7 A. That's correct.

8 Q. And in this case what age was placed on that  
9 document?

10 A. It says 25 years old.

11 Q. Home address is what?

12 A. 1718 Barclay, Richardson, Texas.

13 Q. And I believe that you told me that following that  
14 there are certain Miranda rights or warnings that are given;  
15 is that right?

16 A. Yes, there are.

17 Q. If you would on that first page only, would you read  
18 the Miranda rights and warnings that are contained on State's  
19 Exhibit Number 47?

20 A. It says: I am giving this statement to M.J. Myers,  
21 who has identified himself as a Police Officer of the City of  
22 Garland, and he has duly warned me that I have the following  
23 rights: That I have the right to remain silent and not make  
24 any statement at all; that any statement I make may be used  
25 against me at my trial; that any statement I make may be used

1 as evidence against me in court; that I have the right to  
2 have a lawyer present to advise me prior to and during any  
3 questioning; that if I am unable to employ a lawyer, I have  
4 the right to have a lawyer appointed to advise me prior to  
5 and during any questioning and that I have the right to  
6 terminate the interview at any time. Prior to and during the  
7 making of a statement, I have and do hereby knowingly,  
8 intelligently, and voluntarily waive the above explained  
9 rights and I do make the following voluntary statement to the  
10 aforementioned person of my own free will and without any  
11 promises or offers of leniency or favors, and through no  
12 fear, coercion or threat of physical harm by any person or  
13 persons whomsoever.

14 Q. Now, following that printed form, is there space  
15 then for the suspect, in this case Mr. Murphy, to hand write  
16 whatever he wants to?

17 A. Yes.

18 Q. All right. Sir, on State's Exhibit Number 47 then  
19 will you please read what Mr. Murphy wrote with regards to  
20 this statement?

21 A. Yes.

22 "I was drinking heavily and decided I was going to  
23 visit my daughter and end my life. I packed my stuff and  
24 left my sisters headed to Bleachers sports bar for something  
25 to drink. I drank more alcohol and started walking down the

1 road beside Bleachers on my way to 635 so I could hitch a  
2 ride to Wills Point to see Alyssa where exactly I saw miss  
3 Bertie but I told her I needed a ride to 635 and she agreed  
4 to take me as long as she was safe. I assured her I wasn't  
5 out to hurt anyone and we drove off. We drove (sic) off  
6 toward 635 and about 30 minutes into heavy construction I  
7 decided what I was doing was wrong so I told miss Bertie to  
8 let me drive so I could take her and her car somewhere I  
9 could leave them so I could hitch a ride to 635. We pulled  
10 into a parking lot and I told her I was going to put her in  
11 the trunk and go to a payphone and call the police after I  
12 got far enough away so they could get her out safely. After  
13 she got in the trunk I had the gun in my right hand and  
14 before I shut the trunk I switched hands because I can't feel  
15 my left hand and its habit for me to use my right hand to  
16 open and close doors. When I reached for the trunk lid I  
17 still had the gun in my left hand and grabbed it too hard and  
18 it shot her. I freaked out and started to run, but turned  
19 back to see what happened to her and I knew she was gone so I  
20 drove around all night drinking as if I told myself this  
21 didn't happen and decided I was going to wait until my sister  
22 left for work and the whole time my mind was telling me it  
23 didn't happen. The next morning I went to my sisters, parked  
24 the car in the garage and put a shop vac hose in the tailpipe  
25 and into the back window. I layed in the front seat and



1 crank the car and before I fell unconscious the thought of my  
2 niece and sister seeing me dead and discovering what had  
3 happened would destroy them both. So I left the house and  
4 decided to go see an old friend Shod and my daughter and kill  
5 myself at the country somewhere. I bought beer in Terrell  
6 and continued to block what had happened while drinking. I  
7 went to Shods and then went for more beer and whiskey and  
8 intended to leave that night to commit suicide. I got tired  
9 because I had been up for 2 days and hadn't stopped drinking  
10 yet. I put Miss Bertie at the bottom of Livingston hill  
11 cause the end of all this had come, but was not going to kill  
12 myself untill I saw Alyssa. Shod offered me a place to sleep  
13 and I decided to sleep till morning see Alyssa and finish my  
14 life. While sleeping the police came in and arrested me. To  
15 all the people destroyed by this was not intentional and I'm  
16 sure you wish me dead and I would wish the same. I'm  
17 cooperating so you understand I'm not trying to hide what  
18 happened and the fact is I'm not an evil person who hurts  
19 people."

20 Q. First of all, I want to talk about the locations  
21 that Mr. Murphy mentions there in State's Exhibit Number 47.  
22 When he talks about going to Bleachers, I guess -- I believe  
23 you've already told us that Bleachers is located in Garland;  
24 is that correct?

25 A. Yes, it is.

1 Q. When he stated that he started walking down the road  
2 beside Bleachers on my way to 635, what is the road that  
3 fronts Bleachers?

4 A. That is, I believe, Arapaho.

5 Q. Now, Arapaho at that point is what, an east-west or  
6 a north-south road?

7 A. It's actually east -- east and west right at  
8 Bleachers.

9 Q. If we were to continue walking down east on Arapaho,  
10 would there come a point when it would become actually a  
11 north-south road?

12 A. Yes, it does -- it does curve around.

13 Q. Does it become -- does it actually curve into  
14 another road that continues further south?

15 A. It would -- I think it curves around and changes  
16 names into North Garland.

17 Q. If we were to continue on North Garland south, would  
18 North Garland Avenue actually intersect LBJ which is 635?

19 A. Yes, it would.

20 Q. Now, the southern boundary for the City of Garland  
21 in that location would be what?

22 A. It is 635.

23 Q. So that I understand, the area from Bleachers south  
24 to 635, Detective, is that entire area located within the  
25 City of Garland?

1 A. Yes, it is.

2 Q. Is all of that area located within Dallas County,  
3 Texas, sir?

4 A. Yes, it is.

5 Q. Now, as a general rule when a suspect gives you a  
6 statement, is he free to write whatever he wants to?

7 A. Yes, he is.

8 Q. Was Mr. Murphy free to write whatever he wanted to?

9 A. Yes, he was.

10 Q. When you saw State's Exhibit Number 47 and had an  
11 opportunity to read it, sir, were you in a position at that  
12 point to verify all of the information that he had just given  
13 to you?

14 A. No. At the time I was receiving this statement, I  
15 was not.

16 Q. I want to go specifically to portions of that  
17 statement. First statement when he says, "I was drinking  
18 heavily and decided I was going to visit my daughter and end  
19 my life." When he made that statement that he had been  
20 drinking heavily, had you had an opportunity at that point to  
21 talk with Kenneth Clance who is the bartender at Bleachers?

22 A. No.

23 Q. Were you aware of his observations of the defendant  
24 when he got to Bleachers and when he left Bleachers?

25 A. No, I was not.

1 Q. Did you know how many drinks the defendant actually  
2 had at Bleachers?

3 A. No, I did not.

4 Q. Were you aware of Mr. Clance's opinion that the  
5 defendant was not intoxicated when he left Bleachers?

6 A. No, I was not.

7 Q. Secondly, when the defendant says in his statement  
8 that he drove around all night, at that point when he gave  
9 that statement back to you, were you aware that Ms.  
10 Cunningham's card had been used twice at a ATM machine in  
11 Richardson shortly after 4:00 p.m. on October the 4th?

12 A. No. At the time of this statement I was not aware  
13 of that.

14 Q. Were you aware that Ms. Cunningham, as well as Ms.  
15 Conner's credit cards had been used at 11:30 p.m. and later  
16 at approximately 4:30 a.m. at an ATM machine on Harry Hines  
17 in Dallas?

18 A. No. At the time of this statement, I was not aware  
19 of that.

20 Q. Were you aware that the defendant had shortly after  
21 using the credit card at the ATM machine, that he had picked  
22 up several young people in Richardson and started giving them  
23 rides around town?

24 A. I'm sorry. You have to ask me that again.

25 Q. Were you aware that the defendant around 5:00 p.m.

1 on October 4th had actually started giving young people rides  
2 in Ms. Cunningham's car?

3 A. Yes.

4 Q. Were you aware that the defendant had been at the  
5 Richardson Motor Sports with two of those juveniles at  
6 approximately 6:20 p.m.?

7 A. Yes.

8 Q. The statement that he went to his sister's house,  
9 there was some discussion in that statement about certain  
10 items, hoses and the like. At that point had any items been  
11 recovered from that house similar to hoses or vacuum hoses or  
12 anything of that sort?

13 A. No, not at this time.

14 Q. Now, later were certain items recovered?

15 A. Yes, they were.

16 Q. Did you recover them yourself?

17 A. I did.

18 Q. Tell the members of the jury where those items  
19 were.

20 A. They were located in the garage of the residence.

21 Q. What was the condition? Were they all lined up neat  
22 and nice, or were they scattered about, or what was the  
23 physical appearance of those items when you first saw them?

24 A. They were just laying on the floor in the garage. I  
25 wouldn't say that -- they weren't -- they weren't stored on a

1 shelf. They were just laying on the floor, scattered on the  
2 floor.

3 Q. You work suicides before?

4 A. Yes, I have.

5 Q. Have you worked suicides where carbon monoxide from  
6 a car has been used as the suicide weapon?

7 A. Yes, I have.

8 Q. What was your impression having worked suicides and  
9 having seen these items on the floor, what was your  
10 impression at that time?

11 MR. BYCK: Your Honor, this is complete  
12 speculation. This man is nowhere an expert in suicide or in  
13 those manners of taking one's own life. He has not been  
14 qualified as an expert. No predicate has been laid. We  
15 object.

16 THE COURT: Objection is overruled.

17 Q. (By Mr. Davis) What was your impression?

18 A. Well, as I recall, I'm not -- I'm not sure that I --  
19 that it made an impression on me personally right then and  
20 there when I collected it. I -- he said that he had used  
21 those items in an attempt to commit suicide. I was there to  
22 collect those items. I found them, collected them, brought  
23 them to the police department.

24 MR. DAVIS: Okay. May I approach, Your Honor.

25 THE COURT: You may.

1 Q. (By Mr. Davis) Detective Myers, first of all,  
2 looking at State's Exhibit 40, is this a blue towel that you  
3 obtained from the garage there at 1718 Barclay?

4 A. Yes, it is.

5 Q. State's Exhibit Number 39, is this a hose that you  
6 obtained from the garage there at Barclay?

7 A. Yes.

8 Q. State's Exhibit Number 38, is this another hose that  
9 you obtained from the garage there on Barclay?

10 A. Yes, it is.

11 MR. DAVIS: Your Honor, at this time we'll  
12 offer State's Exhibits 38, 39, and 40.

13 (State's Exhibit No. 38 through 40 offered)

14 MS. BALIDO: Judge, if we can look at them  
15 just for a second. No objection.

16 MR. BYCK: No objection to State's Exhibit  
17 38, 39, and 40, inclusive.

18 THE COURT: Admitted.

19 (State's Exhibit No. 38 through 40 admitted)

20 Q. (By Mr. Davis) Where exactly did you find these  
21 three items?

22 A. All three were on the floor in the garage.

23 Q. Were the hoses hooked up together, or do you recall?

24 A. I don't recall. I don't think they were, but I'm  
25 not sure.

1 Q. Now, when he said that he had gone to his sister's  
2 house, were you aware of whether or not members of the  
3 Garland Police Department had been over there to process the  
4 bathroom for signs of blood evidence?

5 A. Yes, I was aware of that.

6 Q. Are there different methods that the police agencies  
7 use to detect really blood that's not visible to the naked  
8 eye?

9 A. Yes.

10 Q. What sort of methods are used?

11 A. One of the methods that we use is a process chemical  
12 called luminal.

13 Q. And what does luminal do?

14 A. Luminal is a chemical that if you were to spray it  
15 on any surface, it might indicate whether or not there's  
16 blood on that surface. Even though that blood is not visible  
17 to the naked eye, the luminal will make -- make the blood  
18 glow in the dark and it's just a -- it's an indication that  
19 there is blood there. Could have been there for a long time,  
20 and the luminal will tell you that it's been there.

21 Q. Now, at the time that he gave this statement, did  
22 you know whether or not forensics people from the Garland  
23 Police Department had processed a bathtub at 1718 Barclay for  
24 possible blood evidence?

25 A. I had been told that, yes.



1 Q. It's your understanding they used luminal?

2 A. Yes.

3 Q. Were you aware of the results of the luminal?

4 A. I was told they were getting some -- some hits on  
5 the luminal in the bathtub and the shower area.

6 Q. Which would be consistent with what?

7 A. Finding blood.

8 Q. When the defendant told you that this was an  
9 accidental shooting, you didn't have the results of any  
10 autopsy at that time, did you?

11 A. Did not.

12 Q. You hadn't had an opportunity to talk with the  
13 medical examiner, had you?

14 A. Had not at that time, no.

15 Q. Were you aware of the location of the shot that was  
16 inflicted on Ms. Cunningham?

17 A. No, I was not.

18 Q. Were you aware of the possible distance of the shot,  
19 just how close the end of the barrel would have been at the  
20 time that it fired into Ms. Cunningham?

21 A. At that time I was not aware of that.

22 Q. Were you aware of whether or not Ms. Cunningham had  
23 bruising on her body, specifically to her chest, her arms,  
24 and her shoulder area?

25 A. No, I was not.

1 Q. This -- this statement, did it contain any  
2 explanation for what my have happened to Ms. Cunningham's  
3 watch?

4 A. No, it does not.

5 Q. Does it contain any explanation as to what happened  
6 to Ms. Cunningham's ring?

7 MS. BALIDO: Judge, I'm going to object at  
8 this point as argumentative.

9 THE COURT: Sustained.

10 MS. BALIDO: Exhibit speaks for itself.

11 Q. (By Mr. Davis) Sir, when he told you that he can't  
12 feel his left hand, at that point had you talked with any  
13 coworkers of Mr. Murphy from either Terrell or Wills Point?

14 A. At that time I had not, no, sir.

15 Q. Had you reviewed any medical records belonging to  
16 Jedidiah Isaac Murphy?

17 A. No, I had not.

18 Q. Had you talked with any of the doctors who may have  
19 treated him in the past?

20 A. No, I did not.

21 Q. So you simply, as I understand, allowed him to write  
22 what he wanted to and he signed off on it, correct?

23 A. That's correct.

24 Q. Now, after you had concluded taking the statement  
25 from Mr. Murphy, at some point did you become aware that

1 attorneys had arrived at the police station on his behalf?

2 A. Yes, I did become aware of that.

3 Q. And what did you do as a result of that?

4 A. My super -- my supervisor advised me that there were  
5 attorneys at the police department to see Mr. Murphy, and I  
6 immediately returned him to the book-in or to the jail area.

7 Q. Make any other attempt to interview him that day?

8 A. None at all.

9 Q. Did you ever see the attorneys who were there at the  
10 police station?

11 A. Yes, I did.

12 Q. Are either of them or any of them here in the  
13 courtroom this afternoon?

14 A. Yes, they are.

15 Q. Would you please point him out -- please point them  
16 out?

17 A. This gentleman seated right here with the white  
18 shirt and blue tie and the lady dressed in yellow.

19 Q. I believe that you're referring to Mr. Byck and Ms.  
20 Little; is that correct?

21 A. Yes, sir.

22 Q. Did you have any conversations with them that day?

23 A. No, I did not.

24 Q. Now, did you have an opportunity to observe the  
25 physical condition or appearance of the defendant when you

1 went back there to the police station?

2 A. Yes.

3 Q. Had his demeanor, his appearance changed in any way?

4 A. His demeanor changed quite a bit when we got to the  
5 police department actually.

6 Q. How did it change?

7 A. Well, he -- he almost immediately was no longer  
8 quiet and silent. He immediately opened up, said that he  
9 wanted to cooperate, was very talkative and easy to talk to  
10 from that point on really.

11 Q. When you bring a suspect in in a case like this, are  
12 you trained to observe for possible injuries that they may  
13 have sustained?

14 A. Yes.

15 Q. Did you do that with Mr. Murphy?

16 A. Yes.

17 Q. Were photographs taken to document his physical  
18 condition that day?

19 A. He would have been photographed that day in the --  
20 in the book-in proceeding. He was photographed again I think  
21 the next day.

22 Q. And are you aware of how he appeared at that time?

23 A. Yes.

24 MR. DAVIS: Your Honor, may I please approach.

25 THE COURT: You may.

1 Q. (By Mr. Davis) Detective Murphy, looking --  
2 Detective Myers, I'm sorry, looking at State's Exhibits 42,  
3 43, 44, 45, and 46, do you recognize these to be photographs  
4 of the defendant taken while he was in custody at the Garland  
5 police station?

6 A. Yes, they are.

7 MR. DAVIS: Your Honor, at this time we will  
8 offer State's Exhibits 42 through 46.

9 (State's Exhibit No. 42 through 46 offered)

10 MS. BALIDO: Judge, before I lodge my  
11 objections, may I take this witness on voir dire?

12 THE COURT: You may.

13 Voir Dire Examination

14 By Ms. Balido:

15 Q. Officer, you stated that -- that pictures were taken  
16 at two separate times at the Garland jail; is that correct?

17 A. Yes.

18 Q. They were taken when he first booked in?

19 A. Yes.

20 Q. And they were also taken at a later time?

21 A. Yes.

22 Q. So that would be probably some were taken on the 6th  
23 of October and some were taken on the 7th of October?

24 A. Yes.

25 Q. When were State's Exhibit Number 42, 43, 44, 45, and

1 46 taken?

2 A. I was sure about all of them except for one. If  
3 you'd show them to me again, I can tell you.

4 MS. BALIDO: May I approach the witness,  
5 Judge.

6 THE COURT: You may.

7 A. These were all taken on the second day.

8 Q. (By Ms. Balido) Okay. So these were not -- these  
9 pictures were not taken as part of the book-in procedure for  
10 the Garland county jail -- I mean the Garland City Jail?

11 A. Yes, ma'am, that's correct.

12 Q. Okay. Did -- before you took these pictures, did  
13 you read him -- specifically before you took these pictures,  
14 did you read him any Miranda warnings?

15 A. Yes.

16 Q. Okay. And that was done on the 7th; is that  
17 correct?

18 A. Yes, ma'am, that's correct.

19 Q. Okay. So these were taken after the Miranda  
20 warnings were taken -- I mean, were told to him on that  
21 second occasion?

22 A. Yes, ma'am.

23 Q. And did you tell him at the time that you were  
24 taking these pictures that these pictures could be used  
25 against him?

1 MR. DAVIS: I'm sorry, Judge, I'm going to  
2 object. This is outside of any requirement. Miranda warning  
3 is not required to take a photograph.

4 THE COURT: What's the defense objection?

5 MS. BALIDO: Judge, our objection is that at  
6 the time that these were taken they were not taken on any  
7 kind of routine procedure, but taken for the fact to be used  
8 against him in court. For taking -- the state of the  
9 evidence is right now that when they were taken, he was  
10 assigned counsel and that the Miranda warnings were given and  
11 therefore -- and later -- well, he was assigned counsel at  
12 that time. He was then re-approached by the detective, and  
13 the detective initiated contact, the result of which is these  
14 pictures. And we would object on those -- on that basis at  
15 this point.

16 THE COURT: The Court rules as a matter of law  
17 the photographs are non-testimonial. The 5th Amendment is  
18 not applicable. The defense objection is overruled. They  
19 are admitted.

20 (State's Exhibit No. 42 through 46 admitted)

21 Q. (By Mr. Davis) Detective Myers, looking at the  
22 defendant today, has his appearance changed from -- from  
23 October the 6th of the year 2000?

24 A. Yes, it has.

25 Q. Looking first at State's Exhibit Number 42, is this

1 a photograph of his face and his head as it appeared on  
2 October 7th of last year?

3 A. Yes, it is.

4 MR. DAVIS: Permission to publish, Your Honor.

5 THE COURT: You may.

6 (Exhibit published to jury.)

7 Q. (By Mr. Davis) As you looked at Mr. Murphy that  
8 day, did you note some possible injuries?

9 A. Yes.

10 Q. First of all, State's Exhibit Number 43, is this a  
11 photograph showing the palm area of Mr. Murphy?

12 A. Yes.

13 Q. And are there some areas there of red that you  
14 indicated as possible injuries?

15 A. Yes, sir, there is.

16 (Exhibit published to jury.)

17 Q. (By Mr. Davis) State's Exhibit Number 44, would  
18 this be the back portion of his hands?

19 A. Yes, it is.

20 Q. And again, did you feel that there may be some  
21 possible scratches or injuries here?

22 A. Possibly, yes.

23 (Exhibit published to jury.)

24 Q. (By Mr. Davis) Detective, had you had an  
25 opportunity to observe the area around that creek where Ms.



1 Cunningham's body was found?

2 A. Yes, I did.

3 Q. And what was the general nature of that area, smooth  
4 banks, sandy?

5 A. Well, it was -- it was -- part of it was covered by  
6 some dirt banks. Other parts was some pretty jagged concrete  
7 that had been dumped there.

8 Q. State's Exhibit Number 45, would that be the right  
9 elbow area?

10 A. Yes.

11 (Exhibit published to jury.)

12 Q. (By Mr. Davis) State's Exhibit Number 46, does this  
13 show the back and the -- as well as the left shoulder area  
14 for the defendant?

15 A. Yes, it does.

16 MS. BALIDO: Judge, at this point we'd object  
17 before he shows it to the jury, publishing it to the jury.  
18 We'd object the way that the picture is situated it -- the  
19 probative value of the picture is substantially outweighed by  
20 the prejudicial effect and we object for that reason.

21 THE COURT: Rule 403, the objection is  
22 overruled. Admitted.

23 (Exhibit published to jury.)

24 Q. (By Mr. Davis) Detective Myers, at your direction  
25 did -- did certain members of the Garland Police Department

1 retrieve some receipts from Terrell, Texas, in connection  
2 with this case?

3 A. Yes.

4 Q. Specifically, did they retrieve receipts from Cole  
5 Mountain Restaurant and Cowboys Quick Stop in Terrell?

6 A. Yes, they did.

7 Q. That was done at your direction as the lead  
8 investigator; is that right?

9 A. Myself and my supervisors, yes, sir.

10 MR. DAVIS: May I approach, Your Honor.

11 THE COURT: You may.

12 Q. (By Mr. Davis) State's Exhibits 52 and 53, do you  
13 recognize those as being the receipts that were retrieved at  
14 your direction from Cole Mountain and Cowboys Quick Stop in  
15 Terrell?

16 A. Yes.

17 MR. DAVIS: At this time we would offer  
18 State's Exhibits 52 and 53.

19 (State's Exhibit No. 52 and 53 offered)

20 MR. BYCK: No objection 52 and 53.

21 THE COURT: Both admitted.

22 (State's Exhibit No. 52 and 53 admitted)

23 Q. (By Mr. Davis) State's Exhibit Number 52, the  
24 receipt from Cole Mountain, does that appear to be for a  
25 total of 25.28 with a five-dollar tip? Does that seem to be

1 the indication there, sir?

2 A. Yes, sir. \$25.28 and a five-dollar tip.

3 Q. The signature down there at the bottom, can you make  
4 out what that purports to be?

5 A. No, I can't.

6 Q. First initial, can you make that one out?

7 A. It's a J.

8 Q. Does there appear to be a second initial of C at  
9 some point?

10 A. Well, the second name appears to be C-u-n, and then  
11 it kind of scatters off after that.

12 Q. State's Exhibit Number 53, the receipt from Cowboys  
13 Quick, is that for a total of \$22.29?

14 A. Yes, sir.

15 Q. And again, the signature, would it be similar to the  
16 one that was on the previous document?

17 A. Yes, first initial J and the last name C-u and then  
18 it kind of scatters off after that.

19 Q. The credit card number shown on State's Exhibit  
20 Number 52 of 5429 being the -- that's the merchant number,  
21 the Discover Card 6011, and with the numbers following, sir,  
22 does that appear to be the number that matches State's  
23 Exhibit Number 5 which is Discover Card issued to Bertie  
24 Cunningham?

25 A. Yes, it is.

1 Q. The credit card number shown for the Cowboys Quick  
2 Stop receipt again, would that be the credit card matching  
3 the Discover Card belonging to Bertie Cunningham?

4 A. Yes, it is.

5 Q. When you spoke with the defendant again about the  
6 location of the abduction, the locations that he provided to  
7 you, sir, were they all within Dallas County, Texas?

8 A. Yes.

9 Q. Did he ever indicate otherwise that he either  
10 abducted or shot Ms. Cunningham anywhere outside of Dallas  
11 County?

12 A. No, he did not.

13 Q. Thank you, Detective.

14 MR. DAVIS: I'll pass the witness.

15 THE COURT: May I see the attorneys at the  
16 bench for a scheduling matter?

17 (Side bar discussion off the record.)

18 THE COURT: 5-minute break.

19 (Recess.)

20 THE COURT: Visitors in the gallery, you may  
21 be seated.

22 Sheriff, bring in the jury.

23 THE BAILIFF: Yes, sir.

24 THE COURT: Let the record reflect the jury is  
25 returning to the courtroom at this time.

1 (Jury returned to courtroom.)

2 THE COURT: Jury may be seated.

3 Mr. Murphy, counsel, visitors in the gallery, you  
4 may be seated.

5 Ladies and gentlemen, a couple of the jurors have  
6 some travel commitments, so does this witness and but for  
7 that fact we would be adjourning, but because of some travel  
8 commitments he has, we will continue this afternoon until his  
9 examination has been completed

10 Cross-Examination

11 By Ms. Balido:

12 Q. Detective Myers --

13 MS. BALIDO: I'm sorry. May it please the  
14 Court.

15 THE COURT: It may.

16 Q. (By Ms. Balido) Detective Myers, as you know, my  
17 name is Jennifer and I represent Mr. Murphy in this case.  
18 Okay? I'm going to ask you some questions about your  
19 testimony. If you don't understand anything I'm asking you  
20 or you need me to repeat something, I will. All right?

21 A. Yes, ma'am.

22 Q. You testified in an examining trial regarding this  
23 offense; is that correct?

24 A. Yes, ma'am.

25 Q. And that examining trial commenced on October the

1 24th, the year 2000; is that right?

2 A. That sounds right.

3 Q. Okay. And that was done in front of the Honorable  
4 Vickers Cunningham, a Judge here in Dallas County; is that  
5 correct?

6 A. I'd have to take your word for that.

7 Q. Okay. It was not in this court in front of this  
8 Judge?

9 A. No, it was not.

10 Q. All right. And do you recall --

11 THE COURT: Ladies and gentlemen, a district  
12 court is by law prevented from handling an examining trial in  
13 a capital murder case.

14 You may continue.

15 Q. (By Ms. Balido) And do you recall that during that  
16 examining trial you discussed with the defense attorney and  
17 the prosecutor that the defendant in this case had made a  
18 voluntary statement; is that correct?

19 A. I believe so.

20 Q. And you didn't have it with you at that time?

21 A. No, I don't think I did.

22 Q. And the Judge ordered you to --

23 MR. DAVIS: I'm going to object. This is all  
24 irrelevant, has nothing to do with his testimony.

25 THE COURT: Overruled.

1 MR. DAVIS: It's improper impeachment. I  
2 don't know the purpose of this.

3 THE COURT: Overruled.

4 Q. (By Ms. Balido) And you were asked to turn over a  
5 copy of that voluntary statement; is that correct?

6 A. Yes.

7 Q. Okay. And did you in fact fax a copy of that  
8 voluntary statement over to either the D.A.'s office or to  
9 the defense attorneys as requested by that Judge?

10 A. Yes. The District Attorneys Office had that  
11 statement in their possession, yes, ma'am.

12 Q. On that day?

13 A. I don't believe they had it on that day, but it was  
14 made available to them.

15 Q. Okay. And at that time in addition to the voluntary  
16 statements, you also had additional statements from the  
17 defense; is that correct? From the defendant?

18 A. At that time?

19 Q. Yes, on the 24th --

20 A. Yes.

21 Q. -- of October?

22 A. Yes.

23 Q. But you did not make the defense attorneys aware of  
24 that at that time?

25 A. No.

1 Q. Okay. In fact, you did not make those statements  
2 aware to defense counsel until Thursday of last week; is that  
3 correct?

4 A. That's when that testimony come out, yes, ma'am.

5 Q. Let me ask you a little bit about your training.  
6 Now, you go through training to become a detective; is that  
7 correct?

8 A. Yes.

9 Q. And in fact you go through training to become a  
10 police officer; is that correct?

11 A. Yes, ma'am.

12 Q. And did you take like criminology in college or --  
13 or anything like that?

14 A. I did, yes.

15 Q. Okay. And where did you take that schooling?

16 A. Some of my schooling was in a college in Ohio, some  
17 was here in the Dallas area.

18 Q. Okay. And was any of that schooling done up at the  
19 University of North Texas?

20 A. No.

21 Q. Okay. Let me ask you about -- and part of that  
22 training has to do with dealing with the use of handguns and  
23 their proper use and their safe use in handling certain  
24 situations; is that correct?

25 A. That's correct.



1 Q. Okay. Have you heard of a phenomenon that's called  
2 sympathetic firing?

3 A. No, I have not.

4 Q. Okay. Maybe you don't know it by that name. Have  
5 you heard of the phenomenon that sometimes police officers --  
6 well, let me ask you this. Were you ever trained in your  
7 police training that if you are -- are handling a gun in your  
8 hand, that you are not to do anything else with your other  
9 hand like search down or pat down a defendant for the fear  
10 that this gun over here might go off?

11 A. Well, if you're asking me if I'm aware -- aware that  
12 there is a possibility of an accidental discharge --

13 Q. That's basically what I'm getting to.

14 A. Yes.

15 Q. Okay. And you're trained -- or you have been  
16 trained through the police academy or whatever -- did you go  
17 through the Garland Police Academy?

18 A. Yes.

19 Q. They have their own Garland Police Academy, don't  
20 they?

21 A. Yes, they do.

22 Q. All right. And were you trained that one of the  
23 ways to keep from doing an -- having an accidental discharge  
24 occur, that you are not to hold your gun with one hand and do  
25 something else with the other hand?

1       A.   Well, actually we are trained not to -- not to do  
2   that, period.

3       Q.   Okay.  In fact, you're trained to -- let's say  
4   you're holding a gun on somebody, and then something else --  
5   someone needs to pat -- you need to pat someone down or maybe  
6   search an area or search a pocket, that you're supposed to  
7   actually holster your weapon before you do that?

8       A.   Yes.

9       Q.   Okay.  And that's so this accidental discharge does  
10   not happen?

11      A.   Yes, ma'am.

12      Q.   But sometimes unfortunately it does in certain  
13   combat or certain situations where maybe somebody doesn't  
14   follow that procedure?

15      A.   I've never personally been involved with an  
16   accidental discharge --

17      Q.   Right.

18      A.   -- but I've heard of them.

19      Q.   Okay.  So it's not something that's outside the  
20   realm of possibility?

21      A.   No, it's not.

22      Q.   Okay.  Have you ever read any articles about it and  
23   how this sometimes happens in situations with police  
24   officers?

25      A.   Yes.

1 Q. Okay. You said that your first place really that  
2 you went to in regard to your investigation on this case was  
3 Collin Creek Mall; is that correct?

4 A. After leaving the police department, yes, ma'am.

5 Q. Right, after leaving the Garland Police Department?

6 A. Yes, ma'am.

7 Q. You drove to Collin Creek Mall; is that correct?

8 A. Yes.

9 Q. And that location is in Collin County, Texas?

10 A. Yes.

11 Q. All right. And you testified that -- and I'm kind  
12 of jumping around a little bit, and I apologize for that.  
13 You testified that when you talked to Mr. Murphy, once you  
14 got to the Garland Police Department, that you read him his  
15 rights, he signed the waiver, and then y'all went out driving  
16 in the car with Detective Tooke; is that correct?

17 A. Yes.

18 Q. And you drove around in all sorts of locations in  
19 Dallas County, Texas, hoping to jar the defendant's memory as  
20 to where he first met up with Ms. Cunningham; is that  
21 correct?

22 A. That's correct.

23 Q. And at that time you testified that you could not  
24 pinpoint any location in Dallas County, Texas, where Ms.  
25 Cunningham and -- and Mr. Murphy first met?

1 A. We did not establish a specific location.

2 Q. In Dallas County, Texas?

3 A. That's correct.

4 Q. And do you know where she was shot?

5 A. No, I do not.

6 Q. Okay. So through your investigation, you have not  
7 been able to pinpoint any location in Dallas County, Texas,  
8 where she was shot?

9 A. That's correct.

10 Q. You also testified, and I wrote it down, that once  
11 he got to the police station, that Mr. Cunningham was very  
12 cooperative -- I'm sorry, that Mr. Murphy was very  
13 cooperative and he kind of -- his mood seemed to change; is  
14 that correct?

15 A. Yes.

16 Q. So when you were driving around in the car  
17 throughout the morning of the 6th of October with Detective  
18 Tooke and Mr. Murphy in the car, was he trying to be helpful  
19 or was he being evasive or what was the situation at that  
20 point?

21 A. He said that he was trying to be helpful. He was  
22 looking -- he would look at an intersection or a building.  
23 He would tell me whether he recognized it or didn't recognize  
24 it. So he wants me to -- he leads me to believe that he's  
25 trying to cooperate at that time.

1 Q. Okay. Now, let me kind of back up a little bit and  
2 ask you a few questions about your other testimony. Let me  
3 direct your attention back to where you first got this call  
4 from Deputy Rose of the Garland -- I mean, of the Van Zandt  
5 County Sheriff's Department. Okay. Did you get -- get the  
6 call that said that they had located the vehicle, or was that  
7 Commander Lay?

8 A. I think that was Commander Lay.

9 Q. Were you in Commander Lay's presence when that --  
10 that call was gotten?

11 A. No, I was not.

12 Q. Did you ever tell Gary Rose of the Van Zandt County  
13 Sheriff's Department not to act on anything or try to arrest  
14 Jim Murphy before y'all got out there?

15 A. I never -- I never saw Gary Rose before in my life  
16 until the night when we got to the Dairy Queen, so I had not  
17 talked to him on the phone or met him before we got there in  
18 Edgewood that night.

19 Q. Okay. Did you and Commander Lay ever discuss  
20 whether or not you wanted the Van Zandt County Sheriff's  
21 Department to handle basically what was your investigation?

22 A. No, I didn't. I did not talk to Commander Lay about  
23 that.

24 Q. Okay. So once you met up with Detective Rose down  
25 at the Dairy Queen, did y'all first go to the scene or did

1 y'all go to the house on Lamar?

2 A. As I recall, we went right straight to the house.

3 Q. All right. And the first thing that caught your  
4 attention was Ms. Cunningham's car sitting outside the  
5 residence?

6 A. I saw it, yes, ma'am.

7 Q. And then you went in there and you talked to Mr.  
8 Murphy; is that correct?

9 A. Yes.

10 Q. Okay. Would you agree with me that Mr. Murphy  
11 looked like a man who had just been woken up? If that's the  
12 correct term of wake. Did he look woken up?

13 A. Well, he was awake. I didn't think that he was  
14 drifting in and out of sleep, so, I really don't -- don't  
15 recall or if I was even looking to see if he had -- had just  
16 been awakened or not.

17 Q. Okay. Any indication once you walked in the room  
18 that anyone -- either in the house or -- well, first let me  
19 start with the house. When you drove up to the house, was  
20 there any indication on the outside of the house that there  
21 had been a large amount of beer consumed at that location?

22 A. I didn't personally see any evidence of that.

23 Q. Did you personally see any evidence of any marijuana  
24 that had been smoked out around the cars or the house?

25 A. No, I did not.

1 Q. When you entered the bedroom where Treshod Tarrant  
2 and Jim Murphy had been sleeping, did you smell any alcohol  
3 in or about that room?

4 A. No, I did not.

5 Q. Did you smell any remnants of the smell of marijuana  
6 in or about that room?

7 A. No, I did not.

8 Q. Okay. And you know what marijuana smells like so if  
9 you smelled it, you'd know it?

10 A. Yes, ma'am.

11 Q. Now, you said that Mr. Murphy when you walked in was  
12 awake and alert; is that correct?

13 A. Yes.

14 Q. Okay. And also in your training as a Garland police  
15 officer and a Garland detective, you're taught how to spot  
16 signs of intoxication; is that correct?

17 A. Yes.

18 Q. And is it true or not true that sometimes people  
19 that are used to drinking a lot or used to taking drugs a  
20 lot, have what is called masking where they can mask the  
21 symptoms of alcohol better than let's say someone that's  
22 never had a drink before?

23 A. I think that's possible, yes.

24 Q. Okay. And that there are certain tests that can be  
25 run on a defendant or a suspect to determine whether or not

1 that person has ingested alcohol or -- or taken illegal  
2 drugs; is that true?

3 A. Medical tests?

4 Q. Well, there are medical tests, but then there are  
5 also things called field sobriety tests that are taught to  
6 different police officers; is that correct?

7 A. Yes.

8 Q. Okay. And have you been trained in those -- I know  
9 it's been a long time since you're a detective, but have you  
10 been trained in --

11 MS. LITTLE: Since you were in patrol.

12 MS. BALIDO: Well, I mean, since now he's a  
13 detective.

14 Q. (By Ms. Balido) But since you were patrol, were you  
15 trained in how to spot these things?

16 A. Well, I think the field sobriety tests that I  
17 received training in would be considered pretty primitive by  
18 today's standards. I haven't received any training in what  
19 is considered -- used today for field sobriety.

20 Q. Okay. The cutting edge technology of what -- of the  
21 field sobriety tests, you don't have any idea about?

22 A. I have received no training in that.

23 Q. So you haven't ever been taught about the horizontal  
24 gaze nystagmus test?

25 A. I never have received training in that.



1 Q. Okay. Or the vertical gaze nystagmus test?

2 A. No.

3 Q. Do you know what they are?

4 A. I -- I have an idea of what they are, but I've  
5 received no training in them.

6 Q. Okay. Basically they're tests not to show how much  
7 alcohol or drugs are in the system, but actually that there  
8 are drugs or alcohol in the system. Is that what your  
9 knowledge is of them?

10 A. Well, I don't know that they conclude that there is  
11 drugs or alcohol. It's just an indication that there might  
12 be.

13 Q. Okay.

14 A. As a result of the tests that are given.

15 Q. Would that be something that was important to know  
16 before you questioned someone regarding a capital murder?

17 A. Well, I would -- I would want to try and determine  
18 whether I thought that person was under the influence of  
19 alcohol or drugs before I questioned them, yes.

20 Q. Okay. And -- and basically from what you did, you  
21 looked at him and you didn't think he was intoxicated and you  
22 kind of talked to him and you didn't think he was intoxicated  
23 and so that was good enough for you?

24 A. Yes, ma'am, it was.

25 Q. All right.

1 COURT REPORTER: Judge, I need just one  
2 minute. Thank you.

3 THE COURT: You may continue.

4 Q. (By Ms. Balido) Detective Myers, at certain points  
5 during your testimony, and it may just be a testimonial  
6 thing, I don't know, that's why I'm asking, there are points  
7 that you said you would have done this and you would have  
8 done that in regard to what you did in this case. Are you  
9 testifying that basically -- I guess what I'm asking, are you  
10 testifying that you followed all these procedures in this  
11 case because you actually followed all these procedures in  
12 this case, or is it because you were trained to do it that  
13 way and you follow your training and you would have done that  
14 if you followed your training? Do you have independent  
15 recollection of doing everything that you've testified to, I  
16 guess, is what I'm asking in this case?

17 A. Yes.

18 Q. Let me ask you about the way that you advised Mr.  
19 Murphy of his rights. Okay. Did you go through -- and this  
20 is orally, as he's still sitting there on the bed  
21 handcuffed. Okay. Did you read through or not really read  
22 through -- did you recite to him the warnings like you did to  
23 the jury today, or did you go through each little part and  
24 then ask him if he understood that?

25 A. I recited the whole entire warning and asked him if

1 he understood it at the end of the warning.

2 Q. Okay. And you remember with clarity that he said,  
3 yes, he understood it?

4 A. Yes.

5 Q. Did you ask him if he wanted to waive his rights and  
6 make any statement before you asked him the question where  
7 are the credit cards?

8 A. I don't believe I did.

9 Q. Okay. But -- so you just asked him the question,  
10 and he told you?

11 A. I asked him if he understood his rights, and after  
12 he acknowledged yes, then I asked the question.

13 Q. Okay. Did he acknowledge yes by -- by lowering his  
14 head, by shaking his head, or saying yes?

15 A. Both.

16 Q. All right. But you did not ask him if he waived his  
17 rights before you asked him the question?

18 A. No.

19 Q. Okay. And you just asked him the question and then  
20 he answered it?

21 A. Yes.

22 Q. And you stated on -- in your direct examination that  
23 he said, "they're outside in her car." Is that the exact way  
24 that he put it?

25 A. I'd have to look at my note. That's the -- that's

1 basically what he said. I have a written note of exactly  
2 what he said, but -- and I'd have to look at that.

3 Q. Okay. Do you have your notebook of your notes or --

4 A. Yes.

5 MR. DAVIS: Let the record reflect I'm handing  
6 Detective Myers his notebook that the Court had previously  
7 reviewed.

8 A. I made a notation at that time, and I put in  
9 quotation marks "in her car, comma, outside."

10 Q. (By Ms. Balido) Okay. And did you also make an  
11 indication on there in quotation marks that he said yes and  
12 nodded his head?

13 A. No, I didn't -- excuse me, let me look at that  
14 again. No, I did not make a notation of that.

15 Q. But you made a notation of what she exactly said?

16 A. Yes, of what he exactly said.

17 Q. I'm sorry, what he exactly said.

18 A. Yes.

19 Q. And you asked no other questions of the defendant at  
20 that time; is that correct?

21 A. That's correct.

22 Q. When you say that you made -- well, first let me ask  
23 you. When you read him his Miranda warnings, did you tell  
24 him what he was charged with?

25 A. Yes.

1 Q. Okay. What did you tell him?

2 A. I told him he was being placed into custody for the  
3 credit card abuse warrant that we had obtained and also that  
4 he was -- would be charged with investigation of murder.

5 Q. Okay. Investigation of murder and not capital  
6 murder?

7 A. I don't really recall whether I used the word  
8 "capital murder" or just murder, but I knew -- I know that I  
9 advised him of one or the other.

10 Q. But you'll agree with me that there's a vast  
11 difference between -- under Texas law of murder and capital  
12 murder?

13 A. Yes, there is.

14 Q. One you can get the death penalty for, and one you  
15 can't?

16 A. That's correct.

17 Q. Did you discuss any of that with Mr. Murphy as you  
18 were advising him of his rights and what he was charged  
19 with?

20 A. No, I did not.

21 Q. Did you at any time discuss with him the difference  
22 between murder and capital murder -- well, did you at any  
23 time discuss with him the difference in murder and capital  
24 murder?

25 A. We did have a -- we did have a conversation about --

1 about the death penalty.

2 Q. Okay. And when did that occur?

3 A. That occurred actually I think during the first  
4 interview at the police department.

5 Q. And how did it exactly come up?

6 A. He's the one that brought it up actually.

7 Q. Okay.

8 A. He's the one that started the conversation about the  
9 death penalty.

10 Q. Okay. And was it after this conversation that he  
11 decided -- was it before or after his written statement?

12 A. That would have been before his written statement.

13 Q. Okay. And was there any kind of discussion as to  
14 whether or not the State would seek the death penalty if he  
15 confessed or not?

16 A. Well, as I recall that conversation, I -- he's the  
17 one that brought it up. I told him that that was something  
18 that really was not for me to decide, that I would present  
19 the case to the District Attorneys Office, I didn't know  
20 whether the District Attorneys Office would seek the death  
21 penalty. And it was during that time that he said that he --  
22 he thought he wanted the death penalty at that time.

23 Q. Okay. And why was that?

24 A. I really have no idea why he would say that.

25 Q. Did that have anything to do -- did you think that

1 kind of fit in with what you knew at the time about his  
2 mental problems?

3 A. Well, at that time I really wasn't even aware of any  
4 mental history at all.

5 Q. Did that fit into what you learned later about his  
6 mental condition?

7 A. No. I got the impression at the time that he said  
8 that, that -- I don't know whether he was being remorseful  
9 for what he had done, feeling sorry for himself or whatever,  
10 but I didn't think that those statements were a result of any  
11 kind of a mental problem that he was having.

12 Q. Okay. Did you -- did you think that was strange?

13 A. No, it really didn't strike me as strange at the  
14 time.

15 Q. Okay. Was it unusual in your experience as a police  
16 detective that someone would want the death penalty?

17 A. Well, I don't think I've ever -- I've never been  
18 involved in a -- in another case prior to this that a person  
19 would even have been eligible for the death penalty.

20 Q. So this is your first capital murder trial?

21 A. Yes.

22 Q. Now, when you testified that you made no -- you  
23 asked him no other questions and then you get in the car and  
24 you started driving -- well, after you -- after you asked him  
25 where are the credit cards and you went out to the -- you

1 went out to the car, I assume, or did you go out to the car  
2 at that time?

3 A. No, I did not. I went outside and looked in the  
4 car, but evidence was retrieved from the car and the car was  
5 searched after I left so I did not see that.

6 Q. Okay. So you immediately left; is that correct?

7 A. I left very shortly after that.

8 Q. Okay. And it was your testimony that was -- there  
9 was no more kind of interrogation or question and answer that  
10 went on from that time until at least you got to the Edgewood  
11 Police Department where he was arranged -- arraigned; is that  
12 correct?

13 A. Yes, that's correct.

14 Q. And where was he located in the car when you  
15 actually made the trip?

16 A. He would have been in the back seat behind -- on the  
17 passenger side.

18 Q. Okay. Any other officer back there guarding him?

19 A. No, there was not.

20 Q. You were in the front seat?

21 A. Yes.

22 Q. And so was Detective Tooke?

23 A. Detective Tooke was the driver of the car.

24 Q. How long did it take you to get from the house in  
25 Edgewood to the Edgewood Police Department?



1       A.    It's a pretty short drive, probably 5 minutes or  
2   less.

3       Q.    Is that a proper police procedure to place someone  
4   that's under arrest for I guess -- not arrest for credit card  
5   abuse, but -- and murder, just to place him back there by  
6   himself?

7       A.    Yes.

8       Q.    All right. When you -- when you brought him out of  
9   the house and put him in the car, did he try to run away?

10      A.    No, he did not.

11      Q.    Did he try to fight you in any way?

12      A.    No, he did not.

13      Q.    So you were driving in the car and he was in the  
14   back seat and you said that he was very quiet -- very still  
15   and very quiet. So I am assuming that he was very quiet,  
16   that you mentioned it twice on that ride over there?

17      A.    He was very quiet, yes.

18      Q.    Okay. Did you ever check back there and see if he  
19   was asleep?

20      A.    No, I did not.

21      Q.    Okay. And you got down to the -- to the Edgewood --  
22   and that's when he was arraigned on murder and capital  
23   murder? I mean, I'm sorry on the murder charge and the  
24   credit card charge?

25      A.    I believe he was actually arraigned on the -- on

1 credit card and capital murder.

2 Q. Okay. I'm not going to try to split hairs with you,  
3 but if the arraignment sheet says murder, will you agree with  
4 that?

5 A. Yes.

6 Q. Okay. Who went along with you besides Tooke to the  
7 Edgewood Police Department?

8 A. We were escorted by -- they were in separate  
9 vehicles, but it was some officers from either Edgewood P.D.  
10 or the Van Zandt County Sheriff's Department.

11 Q. Okay. It was more than one person in a car?

12 A. I'm really not sure. I don't know how many officers  
13 were in the other cars or even what agencies they were from.  
14 I was just directed to follow them. I didn't know where the  
15 Edgewood Police Department was so I was following another car  
16 to get there.

17 Q. Okay. And once you left the Edgewood police station  
18 and you went back out to Livingston Hill, before you went out  
19 there did you ask him any questions regarding the gun?

20 A. Well, he -- I had some indication that -- I think  
21 the other officers had said that he had made a statement that  
22 he had shot Ms. Cunningham and so I did ask him at that time  
23 that -- if he would take us and show us where the gun was.  
24 That was the purpose for returning to the creek.

25 Q. Okay. So -- so it wasn't your purpose to return to

1 the creek -- was that your first time out to the creek?

2 A. Yeah, I think it was. I don't know if I went to the  
3 creek earlier. I don't think I did. I think it was my first  
4 time down there.

5 Q. Okay.

6 A. If I had been there previously, it would only have  
7 been for a minute and two, and I would have turned right  
8 around and left. I had other business to attend to. I think  
9 it was my first trip down there.

10 Q. And when you asked him about the -- about the  
11 weapon, did -- did he tell you that's where it was?

12 A. Yes, he did.

13 Q. Okay. And he did that kind of cooperatively? I  
14 mean, you didn't have to force it out of him or anything?

15 A. No, he was cooperating. Yes.

16 Q. And then once -- how long did it take you to get  
17 from the Edgewood Police Department to Livingston Hill?

18 A. Once again, it's a pretty short drive, less than 5  
19 minutes.

20 Q. And again, he was still and quiet?

21 A. Yes.

22 Q. Was he asleep?

23 A. I don't believe that he was.

24 Q. Okay. Did you ever look back there to check?

25 A. No, I did not.

1 Q. Okay. And then he got out to the Livingston Hill,  
2 and he said that he wouldn't get out of the car?

3 A. No, he did not want to get out of the car.

4 Q. Okay. So he had been cooperative up to that point?

5 A. Yes.

6 Q. And that he wouldn't get out of the car?

7 A. Did not want to, no.

8 Q. Did you have to force him to get out of the car?

9 A. No, we did not.

10 Q. Did you say -- did you tell him that he had to get  
11 out of the car?

12 A. No, we did not.

13 Q. Did you just ask him to get out of the car, and he  
14 wouldn't get out?

15 A. Yes.

16 Q. And did he tell you anything out there about where  
17 the gun might be?

18 A. Yeah, he -- I made it clear to him why we were  
19 there. It was to try and locate the gun. And so I asked him  
20 where -- where was the gun located. And he said, "it's in  
21 the water near her body." And he indicated that he had  
22 tossed it in and he was indicating to me like this, that he  
23 had tossed it under hand into the water.

24 Q. Okay. So now he was not handcuffed?

25 A. Well, I -- it must have been my hand then that was

1 indicating that he tossed it into the water.

2 Q. Okay.

3 A. So he was handcuffed the entire time.

4 Q. All right. And then you went out -- back from that  
5 location to the Garland Police Department?

6 A. Yes. When we left the creek, we returned and drove  
7 directly to the Garland Police Department from there.

8 Q. And how long did that take?

9 A. That's about -- it was -- traffic was extremely  
10 light. It was very early in the morning. I'm going to  
11 estimate it to be around 45 minutes, give or take 10 or 15  
12 minutes.

13 Q. And do you -- would still describe him as still and  
14 quiet in the back seat?

15 A. That entire time, yes.

16 Q. Okay. Was he asleep at that time?

17 A. I don't know if he was or not.

18 Q. Did you ever look back to check?

19 A. No, I did not.

20 Q. Did you ever -- so if he was laying down flat in the  
21 back seat, you might not have seen that?

22 A. That's possible that he could have been -- could  
23 have done that.

24 Q. Okay. And was that consistent or inconsistent with  
25 what he talked about later about -- in his statement about

1 driving around and drinking heavily for this long period of  
2 time?

3 A. Was what consistent?

4 Q. Was -- was him being quiet and still in the back of  
5 the car or let me just ask you. Would be -- falling asleep  
6 in the back of a police car be consistent with someone that  
7 hadn't had a lot of sleep in the past 48 hours?

8 A. Yes, could be.

9 Q. And consuming alcohol for the past 48 hours?

10 A. Yes.

11 Q. Okay. Let me ask you a little bit about this  
12 book-in process at the -- at the Garland City Jail. I would  
13 assume that there are people other than police detectives  
14 that book in people that are going into the jail; is that  
15 correct?

16 A. Yes.

17 Q. So there are actually book-in procedure -- well,  
18 people that are employed to carry out book-in procedures; is  
19 that correct?

20 A. Yes.

21 Q. Okay. So it was not your primary responsibility to  
22 do all the things to book him into jail?

23 A. No, it was not.

24 Q. Basically you lead him up at a counter and they do  
25 all the rest?

1 A. That's correct.

2 Q. Okay. And were you there during the entire book-in  
3 procedure for Mr. Murphy?

4 A. I believe that I was, yes.

5 Q. Okay. And you said at any time he did not ask to  
6 see the nurse?

7 A. No.

8 Q. Okay. And he did not ask to see any doctor that  
9 might be on staff out there in Garland?

10 A. No, he did not.

11 Q. He did not ask to see any kind of psychiatrist at  
12 that time; is that correct?

13 A. That's correct.

14 Q. Okay. Is there a place on the book-in records from  
15 Garland City Jail to indicate whether or not somebody has  
16 been -- had any mental problems before?

17 A. I don't know if it's there. It's a form that I have  
18 never filled out. It's filled out by the people that do the  
19 processing, so I don't think that that's a question, but I  
20 don't know if it is or not.

21 Q. Okay. Would that be something that would be  
22 important to know before you start questioning somebody  
23 regarding their involvement in a capital murder?

24 A. I think that might be important, yes.

25 Q. All right. So once he gets booked in to the Garland

1 City Jail -- and let me kind of back up for a second. Before  
2 he actually got booked in, there was a period that he sat out  
3 in the car, correct?

4 A. At -- at the Garland Police Department?

5 Q. Yes. Is that true or not true?

6 A. No, I don't think that occurred.

7 Q. Okay.

8 A. I don't have any recollection of that at all.

9 Q. I just must have gotten mistaken. I'm sorry. So  
10 once he gets booked into the jail, he's taken to another area  
11 of the police department?

12 A. Yes.

13 Q. And this is where the interrogation rooms are?

14 A. Yes.

15 Q. What are they called?

16 A. They're called interview or interrogation rooms.

17 Q. Okay. And are they set up in such a way -- it's a  
18 small room, correct?

19 A. Yes.

20 Q. What's the dimension of it?

21 A. It's approximately 12 feet by 12 feet.

22 Q. And what is the furniture that's in the  
23 interrogation room?

24 A. There's a small desk in there for the purposes of  
25 writing. It stores some documents. A couple of chairs. If



1 extra chairs are needed, sometimes there might be three or  
2 four people in that room. If extra chairs are needed, then  
3 we'll just grab a chair from another area and bring it in.

4 Q. And when the door to that room is shut, is there any  
5 way for anyone to see inside that room?

6 A. No, there's not.

7 Q. So it's not basically like we see on the TV shows  
8 like Law & Order or one of those places where there's a big  
9 one-way mirror so people can look in and see what's going on  
10 on the other side of the glass?

11 A. No, that's not there. It does not exist.

12 Q. Okay. And there's -- can you tell me whether or not  
13 there's the policy of the Garland Police Department to record  
14 interviews with suspects by any sort of audio recording  
15 device?

16 A. No. We do not have a policy that says you will or  
17 will not record statements from a prisoner.

18 Q. Has it ever been the policy of the Garland Police  
19 Department to record interviews or interrogations or the  
20 taking of a voluntary statement, audio or video?

21 A. We have in the past had the capabilities of making  
22 audio recordings.

23 Q. And you no longer have that capability?

24 A. That equipment no longer is there, yes, ma'am,  
25 that's correct.

1 Q. But you are issued or you do have in your ability, I  
2 guess, to check out from whatever supply shed there is at the  
3 Garland City Jail or the police department one of those  
4 little hand-held recorders or Dictaphones that could take  
5 down everything that happens inside an interview room?

6 A. I have access to one of those, yes, ma'am.

7 Q. Okay. But you did not use your access to that when  
8 you questioned Mr. Murphy?

9 A. No, I did not.

10 Q. Is there also video or audio visual equipment that  
11 can record both the picture and the sound of what is going on  
12 in the interrogation room? Do -- first, let me ask you, is  
13 there anything in there right now set up to do that?

14 A. No, there's not.

15 Q. Has there ever been anything like that in the past  
16 in the Garland jail?

17 A. No, there has not been.

18 Q. Do you have such equipment available for other  
19 reasons?

20 A. Yes.

21 Q. Okay. And that would be for physical evidence  
22 gathering, that sort of thing?

23 A. Yes, we have a camera that is assigned to the  
24 Forensics Unit. We use it to videotape crime scenes.

25 Q. But that -- it wasn't used in the crime scene of

1 this case?

2 A. I -- I would imagine that it was maybe some  
3 different -- different parts of the investigation, but I  
4 don't know -- it's something that I didn't do. Forensic  
5 investigator would have done that and so I don't know -- I  
6 don't know for sure if a videotape was made or not.

7 Q. But basic -- but basically this equipment is  
8 available at the Garland City Jail or the Garland Police  
9 Department, but you did not use it to record your interview  
10 with Mr. Murphy?

11 A. No, we did not.

12 Q. Okay. And as you stated, there is really no policy  
13 to use it or not use it?

14 A. That's correct.

15 Q. Have you ever been party to any discussions with  
16 your superiors or with members of the District Attorneys  
17 Office about the pros and the cons of actually recording a  
18 interrogation?

19 A. Yes.

20 Q. Okay. And what were the pros and the cons of that  
21 that were discussed?

22 A. Well, I think whether or not you make a tape  
23 recording, whether it's audio or video, it boils down to a  
24 matter of personal preference. First of all, whether or not  
25 the investigator that's doing the interview is comfortable

1 with that equipment being in the room and whether or not the  
2 investigator would think that the person that's being  
3 interviewed is going to be comfortable with that equipment.  
4 Some people would be inhibited or even intimidated by the  
5 fact that a camera is right on them while they're trying to  
6 do an interview, and I know I personally would be.

7 Q. Okay. So basically it's a personal preference of  
8 the investigator?

9 A. Yes.

10 Q. Would you agree with me that if there was an audio  
11 or visual recording of an interview, let's just say a  
12 hypothetical interview, that that might be the best way for a  
13 third party, say a jury, to fully understand what happened  
14 inside the interview room?

15 A. Well, I've seen -- I've seen audiotapes of  
16 interviews that I think would be very beneficial to a jury,  
17 but I've also seen them where they just -- they're not  
18 beneficial at all.

19 Q. Okay. Because they just basically didn't do  
20 anything?

21 A. Well, once again, I go back to the person that's  
22 conducting the interview or the person that's being  
23 interviewed would be extremely inhibited or sometimes  
24 intimidated by that equipment sitting there.

25 Q. So --

1 A. So it kind of slows the process down.

2 Q. And it might -- it might hinder your ability to get  
3 a statement from a suspect in that regard?

4 A. It could at times, yes.

5 Q. Okay. So basically what we're left with is we're  
6 left with whatever ends up on the -- on the defendant's  
7 voluntary statement, and it doesn't say confession. It says  
8 voluntary statement; is that correct? And your testimony of  
9 what happened inside the video room?

10 A. Yes.

11 Q. Let me ask you a little bit about how Mr. Murphy's  
12 demeanor changed once you got inside the video room? Were  
13 there times that he cried?

14 A. Yes.

15 Q. Was it on more than one occasion?

16 A. Yes.

17 Q. And was it crying just tears or were there actual  
18 boo-hoos or how -- how can you actually describe that?

19 A. Well, I don't know that I've ever described someone  
20 crying before. He -- he did cry for more than just a second  
21 or two, and I guess to use -- use your words that he was  
22 boo-hooing.

23 Q. Okay. Or -- or would sob be a better word?

24 A. Possibly, yes.

25 Q. Okay. And at the examining trial you described that

1 as a sign of remorse. Do you remember describing it that  
2 way?

3 A. I don't really recall using those words, but if  
4 they're in the record, I must have.

5 Q. Okay. I think I figured out where I got mistaken.  
6 When you were at Livingston Hill or Livingston Creek or  
7 whatever that area is called, was there a time that both you  
8 and Detective Tooke got out of the vehicle?

9 A. I know that I did.

10 Q. Okay. And was there a time that -- that Mr. Murphy  
11 was left in the car by himself that you know of or do you  
12 know?

13 A. Well, I don't -- I don't believe that Detective  
14 Tooke ever got out of the car. If he would have, he would  
15 never have left the side of the car, but -- but I walked away  
16 from the car. I know what I did there.

17 Q. Okay. You walked away from the car, and Detective  
18 Tooke left -- you don't know really?

19 A. That's right.

20 Q. Okay. Is he here to testify?

21 A. I have not seen Detective Tooke today.

22 Q. Okay. Or any time this week?

23 A. No.

24 Q. After you got inside the -- the interrogation room,  
25 was there anybody else in there with you?

1 A. Yes.

2 Q. The entire time?

3 A. Yes.

4 Q. And who was that?

5 A. Detective Tooke.

6 Q. Okay. And he is the one that actually signed the  
7 place where there's a place for a witness signature?

8 A. Yes.

9 Q. Okay. Are you aware that in some police departments  
10 it is the policy to have a civilian witness, a non-police  
11 witness, witness the signing of a statement or the taking of  
12 a statement?

13 A. Yes.

14 Q. Okay. And do you know why that that policy is in  
15 place?

16 A. Well, I would suspect that that is in place so that  
17 later on at trial the person that signed that statement, that  
18 witness could then say that he wasn't intimidated by the fact  
19 that there was only two police officers there, that there was  
20 also a civilian witness there.

21 Q. Okay. But it's the policy of the Garland Police  
22 Department not to do that?

23 A. We've done it both ways actually.

24 Q. Okay. In this case you did it the way -- with two  
25 police officers?

1 A. Yes, ma'am.

2 Q. And no civilian in the room?

3 A. That's correct.

4 Q. Let me ask you a little bit about the time that  
5 the -- well, the time that all these things took place.

6 About what time was Mr. Murphy booked into the Garland jail?

7 A. When he signed his -- the first Miranda warning at  
8 8:52 in the interrogation room, so we probably arrived at the  
9 book-in area approximately 8:30.

10 Q. Okay. And so my --

11 MS. BALIDO: May I approach, please.

12 THE COURT: You may.

13 Q. (By Ms. Balido) So these warnings were signed that  
14 are reflected on State's Exhibit Number 41 at approximately  
15 8:52 a.m. the morning of October the 6th; is that correct?

16 A. Yes.

17 Q. And then you went into the interrogation room and  
18 you began discussing aspects of the case?

19 A. Yes, this would have been done in the interrogation  
20 room.

21 Q. And about how long did that take?

22 A. How long did what take?

23 Q. The initial conversation in the -- in the  
24 interrogation room?

25 A. After this was done?



1 Q. Yes.

2 A. We talked for about 10 or 15 minutes.

3 Q. Okay. And then you left to go out into Garland?

4 A. Yes.

5 Q. And did you drive around in some of the area that's  
6 reflected in State's Exhibit Number 3?

7 A. Yes.

8 Q. Okay. And State's Exhibit Number 3 is what? What  
9 does it depict?

10 A. It's a map of the Jupiter and Arapaho area. Plano  
11 Road is included on this map. I can see an indication of  
12 Bleachers -- indicating the Bleachers Sports Bar.

13 Q. Okay. And where is the Garland City Jail located in  
14 relation to those -- location in Garland?

15 A. From this area it would be generally south and east.

16 Q. Okay. How far south and how far east from what is  
17 depicted on State's Exhibit Number 3?

18 A. To the police department?

19 Q. Yes.

20 A. I'm going to guess it to be about 4 or 5 miles.

21 Q. Okay. And on October the 6th, what type of day was  
22 that? What time -- I mean, what -- was it Monday, Tuesday,  
23 Wednesday, Thursday, Friday, or do you recall?

24 A. I think October the 6th was a Thursday.

25 Q. Would it surprise you that it's Friday, the 6th?

1 A. No.

2 Q. Okay.

3 A. I think October the 6th was the -- and -- because I  
4 do recall the 7th being Saturday, because it was my day off.

5 Q. Okay.

6 A. It was the second day of the investigation, so  
7 October the 6th was a Friday, yes.

8 Q. And how long do you think that it would take you to  
9 get from the Garland City Jail, 4 to 5 miles north and west,  
10 to the locations that are indicated on State's Exhibit Number  
11 3?

12 A. Well, if you were to take a direct route there, you  
13 could -- you could drive there in 5 to 10 minutes.

14 Q. Okay. 5 miles in 5 minutes?

15 A. Uh-huh.

16 Q. Were you in a marked police -- marked police car  
17 with the lights on or -- or is that just regular -- regular  
18 speed?

19 A. That's driving the speed limit.

20 Q. Okay. And about how long did you drive around  
21 during -- you said that you went to every major intersection  
22 in that area; is that correct?

23 A. Yes.

24 Q. Okay. And every -- did you just drive past every  
25 major intersection one time or did you try to come by it a

1 second time to see if maybe that might jog Mr. Murphy's  
2 memory or how did that really occur?

3 A. Well, we started off driving at Mr. Murphy's  
4 direction. Once we got to Bleachers, established that that's  
5 where he said he was, then he was leading us where to drive  
6 and we were going down some streets that he was pointing to.  
7 And we did that for a little while. And then once I felt  
8 like he had exhausted all of the areas that he recognized, we  
9 started driving to some areas at my direction then. And we  
10 did drive to sometimes the same intersection two or three  
11 different times from different angles, from different  
12 directions.

13 Q. So at first Mr. Murphy was the one directing you  
14 around to the area around Bleachers; is that correct?

15 A. Yes.

16 Q. So it didn't really sneak up on him like you  
17 testified earlier?

18 A. No. He directed us to the general area, and I  
19 don't -- I don't recall testifying that it snuck up on us.

20 Q. Okay. But you -- you testified that you didn't  
21 really talk about it and just drove past it to see whether or  
22 not it would jog his memory?

23 A. That's right. When we -- when we got in the car, he  
24 was telling us to go to this Bleachers area, this Bleachers  
25 Sports Bar. I knew where it was. I knew where the area was

1 that he was talking about. And I wanted Detective Tooke who  
2 was driving to drive past it because I wanted to see if Mr.  
3 Murphy was familiar with that area and if he could stop us  
4 and point it out to us, and he did when we drove past the  
5 Bleachers, he said, "hey, you just drove past the place." So  
6 then I was satisfied at that point that he -- he was familiar  
7 with at least that area and knew what he was talking about  
8 there.

9 Q. Did he later indicate to you that he was not  
10 familiar with other areas that you were going to?

11 A. Yes, he did.

12 Q. Okay. And so you thought he was being helpful at  
13 that point?

14 A. Yes, I did.

15 Q. And cooperative at that point?

16 A. At that point I did, yes, ma'am.

17 Q. And did you think at that point that he was telling  
18 you the truth when he was telling you these things?

19 A. Yes, I did.

20 Q. And what time did you get back to -- so you left 10  
21 or 15 minutes after he signed the waiver, the first waiver,  
22 correct?

23 A. Yes.

24 Q. And then you drove around for about how long when  
25 you went to all these intersections a number of times?

1       A.    I think we drove around for about an hour, hour and  
2   a half.

3       Q.    Okay. And it took about 5 minutes to get there from  
4   the Garland jail, so I assume it took about -- I mean, yeah,  
5   about 5 minutes to get back?

6       A.    5 or 10 minutes, yeah. We started -- probably less  
7   time to get back, but once we -- we started drifting back  
8   towards the police department.

9       Q.    Okay. And so about this time -- what time do you  
10   think that you got back to the Garland Police Department?

11      A.    I think we probably got back about 10:30.

12      Q.    Okay. And is that based on your own recollection or  
13   is that based on what you are assuming looking at the  
14   paperwork that's in front of you, the waiver, the statements,  
15   and also the voluntary -- the voluntary statement?

16      A.    Well, I can't say that I looked at a clock and made  
17   a notation of the exact time that we arrived back, you know.  
18   I'm using the times on the -- on these forms to refresh my  
19   memory and estimate a time that we got back.

20      Q.    And at that point in your investigation you were  
21   satisfied that he was trying to cooperate with you?

22      A.    Well, I don't know that I would say that I was  
23   satisfied that he was cooperating, but I felt that he was --  
24   he was trying -- trying to cooperate with us.

25      Q.    Okay. And at that point you hadn't determined that

1 the -- as Mr. Davis called it, abduction occurred in Dallas  
2 County, Texas, correct?

3 A. Well, we had not pinpointed a specific location, but  
4 I personally was satisfied that the abduction had occurred  
5 within the city limits of Garland.

6 Q. Okay. And -- but you did not pinpoint any location?

7 A. No, we did not.

8 Q. And that was the same with the actual death?

9 A. That's correct.

10 Q. And so then you went back to the police department  
11 and you -- did you immediately go back into the room with Mr.  
12 Murphy?

13 A. Yes.

14 Q. And did Detective Tooke go back in?

15 A. Yes, he did.

16 Q. And how did it come about that the voluntary  
17 statement was being written?

18 A. Well, just as soon as we returned to the  
19 interrogation room, then I asked Mr. Murphy if he would be  
20 willing to provide the statement, and he said that he would  
21 be.

22 Q. Okay. And that was -- that was the entirety of your  
23 conversation?

24 A. Yes.

25 Q. And so how did it come about that -- that the rest

1 of it took place?

2 A. Well, when he agreed to give the statement, I  
3 brought the forms to him, asked him to read the warnings on  
4 the top, told him that it was his statement, that he could  
5 write whatever he wanted to write on it. I told him that he  
6 would be left alone during the period that he was going to  
7 write. It was his story to tell. He could write whatever he  
8 wanted to.

9 Q. Let me ask you just a little bit about the procedure  
10 of going in and out of the jail when you've got somebody  
11 charged with murder. Do you have to talk to your supervisor  
12 before you leave the building with somebody that's charged  
13 with murder?

14 A. No.

15 Q. Do you have to check in -- check out with anybody?

16 A. No.

17 Q. Does he have to book out of the -- of the Garland  
18 City Jail?

19 A. No.

20 Q. So there's no records of when you went in -- left  
21 the Garland jail and no records as to when you came back?

22 A. Well, there are -- there are log-in sheets in and  
23 out of the jail, but I'm not sure that they were even there  
24 that day or that we used them. They might be.

25 Q. Okay. But you don't know?

1 A. I don't know.

2 Q. And you don't have them in that big notebook of  
3 yours?

4 A. No, I don't have that with me. No.

5 Q. Okay. And when you got back to the jail after  
6 driving Mr. Murphy around, did anybody tell you that Mr.  
7 Murphy had been assigned counsel out of this court?

8 A. When we returned?

9 Q. Yes.

10 A. No.

11 Q. Did anyone tell you that assigned counsel was on  
12 their way to Garland?

13 A. No.

14 Q. And when did you first learn that Mr. Murphy had  
15 counsel?

16 A. We had completed the statement. We had -- we were  
17 continuing our conversations and either Commander Lay or  
18 Lieutenant Thompson, I'm not sure which, I think it was  
19 actually Lieutenant Thompson knocked on the door and  
20 interrupted me, interrupted the interview, asked me to step  
21 outside and I did. And he informed me that there were  
22 lawyers there in the building.

23 Q. And did Detective Tooke stay in there with Mr.  
24 Murphy?

25 A. Yes.



1 Q. And actually see you leave the room?

2 A. Yes.

3 Q. Okay. And did Commander Lay know where you were at  
4 all times that morning -- well, first was he in the building?

5 A. Yes.

6 Q. And did you tell him that you were going to go  
7 interview Jedidiah Murphy at 8:53 that morning?

8 A. Well, actually my first -- my chain of command  
9 supervisor is Lieutenant Thompson, so I would have been  
10 communicating with him.

11 Q. Okay. Did you tell him that you were going to take  
12 Mr. Murphy into the -- into the interrogation room?

13 A. I don't have -- I don't have recollection that I  
14 did.

15 Q. Okay. Did you tell Lieutenant Thompson that you  
16 were going to leave the building with him and go drive him  
17 around and see if you could figure out where -- where any of  
18 the events in this case took place?

19 A. Well, I can't say right here today that I have  
20 recollection that I did, but I'm sure I would have. I  
21 would -- every time I leave the building like that, I would  
22 have notified my supervisor.

23 Q. And did you notify your supervisor that you were  
24 back in the building?

25 A. When we came back to the building, I don't -- I

1 think the next time I saw Lieutenant Thompson was when he  
2 knocked on the door. So when we came back, we would have  
3 gone not to his office, we would have gone to the  
4 interrogation room. So I don't really remember seeing him  
5 again until he knocked on the door.

6 Q. And how long was it from the time that you went back  
7 into the interrogation room to the time that he knocked on  
8 the door?

9 A. Oh, Mr. Murphy had completed the statement. We had  
10 signed it. We had just started talking some more about the  
11 fact that he was having trouble finding that location when we  
12 were out driving around, so it was very shortly after he  
13 signed the statement.

14 Q. And so that would be very shortly after what time?

15 A. Very shortly after 11:30.

16 Q. And at that time your supervisor, Lieutenant  
17 Thompson, notified you that -- that his attorneys had been  
18 there?

19 A. Yes, that attorneys were there.

20 Q. Okay. Did Lieutenant Thompson tell you how long  
21 they had been waiting there?

22 A. No, he did not.

23 Q. Did he tell you that they had been waiting there  
24 over an hour?

25 A. No, he did not.

1 Q. Okay. Did he tell you that his lawyers had  
2 complained that they had not been granted access to Mr.  
3 Murphy?

4 A. No, he did not.

5 Q. Did anyone ever tell you that?

6 A. No.

7 Q. Let me ask you about the location of this  
8 interrogation room. Is it on a floor other than the ground  
9 floor of the Garland Police Department?

10 A. Yes, it is.

11 Q. Okay. And to your knowledge did -- and tell me  
12 where it's located inside the Garland -- I've been out there  
13 to the Garland Police Department, but is it -- is it on the  
14 second floor or the third floor --

15 THE COURT: Counsel, excuse me, is this a  
16 relevant matter germane to the assistance of the jury with  
17 regard to contested fact issues?

18 MS. BALIDO: Yes, it is, Judge.

19 THE COURT: Okay. Let's move on. Wind it  
20 up.

21 A. Yes, ma'am, it's located on the second floor.

22 Q. (By Ms. Balido) And is it located next to the  
23 detective -- the detective offices?

24 A. Yes.

25 Q. Okay. Were you ever aware that detective -- you

1 know who Detective Delmar of the Garland Police Department  
2 is?

3 A. Yes, I do.

4 Q. And you are in -- and you know that -- that  
5 Detective Delmar's wife also works for Garland?

6 A. Yes.

7 Q. And she works at the front desk?

8 A. I believe so.

9 Q. To your knowledge, did she ever call upstairs and  
10 try to get in touch with you at your desk to try to tell you  
11 that Mr. Murphy's attorneys were there?

12 A. No.

13 Q. Okay. After -- after you interviewed and got a  
14 statement from Mr. Murphy on October the 6th, the year 2000,  
15 and after you found out that he had counsel, did you approach  
16 Mr. Murphy again about talking about the offense?

17 A. Not on October the 6th.

18 Q. How about on October the 7th?

19 A. I did on October the 7th.

20 Q. And did you -- and why -- what was the purpose of  
21 questioning him on that day?

22 A. The purpose for that was because we still did not  
23 have the answer to a lot of questions. We did not know the  
24 abduction point. We had not recovered the gun. We did not  
25 know where the shot had been fired. And so there was a lot

1 of questions that were important to the investigation.

2 Q. Do you know any of that information now?

3 A. No, I do not.

4 Q. After you spoke to Mr. Murphy on October the 7th,  
5 the year 2000, did you talk to him again?

6 A. Yes.

7 Q. And was the purpose for talking to him again to  
8 determine or to gain more information about the abduction  
9 site, the site of the actual death, I guess is my question?

10 A. Yes.

11 Q. Did you have him sign Miranda warnings?

12 A. Yes.

13 Q. Okay. Do you know that information after that  
14 interview?

15 A. You're going to have to ask me that again.

16 Q. Did you find out any new information regarding the  
17 location of the, quote, abduction site, or the location of  
18 the death of Ms. Cunningham?

19 A. No, we did not.

20 Q. And when did that interview take place?

21 A. We did an interview on October the 7th, the next  
22 day. We did another interview on October the 11th, and we  
23 attempted to do a fourth interview on October the 13th.

24 Q. And the fourth interview on October the 14th --

25 A. 13th --

1 Q. -- did you --

2 A. The 13th, yes, ma'am.

3 Q. I'm sorry, the 13th. Was that for the purpose of  
4 determining the location of, quote, the abduction site and  
5 the location of where she was killed?

6 A. Yes.

7 Q. Did you learn any new information about that at that  
8 time?

9 A. No, we did not.

10 Q. And did you turn over any paperwork in regard to  
11 those interviews or anything that Mr. Murphy might have  
12 signed pursuant to the order of Judge Cunningham during the  
13 examining trial?

14 MR. DAVIS: I'm sorry, Judge Cunningham's  
15 order was to turn over voluntary statements, State's Exhibit  
16 Number 47, that was provided to counsel.

17 MS. BALIDO: I'm just asking if he turned it  
18 over, Judge.

19 THE COURT: Is it turned over?

20 THE WITNESS: Yes. To my knowledge, it was  
21 turned over.

22 Q. (By Ms. Balido) To the defense attorneys or the  
23 District Attorneys Office?

24 A. I turned it over to the District Attorneys Office.

25 MS. BALIDO: Judge, I'll pass the witness.

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Q. Detective Myers, I just have a few questions very briefly for you.

A. Yes.

A. No, I didn't see any of that.

A. No, it's not.

A. No, I have not.

A. I think he probably cried during the very first interview.

Q. Up there at the Garland Police Department?

1 A. Yes.

2 Q. By that time he was under arrest and had already  
3 been arraigned in this case, correct?

4 A. That's correct.

5 Q. Ms. Balido asked you about your opinion concerning  
6 the defendant's truthfulness while you were riding around  
7 town with him on October the 6th. Did your opinion  
8 concerning his truthfulness change over time?

9 A. Yes, it did.

10 Q. And why did it change?

11 A. I think he knows the answer to some questions that I  
12 don't know the answers to. There was quite a few questions  
13 that he did not provide answers to us to.

14 Q. Did you later determine that portions of his  
15 statement turned out to be false, information that he gave  
16 you?

17 A. Yes.

18 Q. Did you later try to determine whether he had been  
19 drinking over at his sister's house prior to going to  
20 Bleachers?

21 A. Yes, I did try to determine that.

22 Q. Were you able to determine that?

23 A. I was able -- no, I was not.

24 Q. Did any member of that household every bring over to  
25 you a bottle of champagne, an empty bottle of champagne?



1 A. No, they did not.

2 Q. Anybody ever bring over to you an empty bottle of  
3 Gilbey's gin?

4 A. No.

5 Q. How about an empty bottle of Tequila? They ever  
6 bring that over to the police station?

7 A. No, they did not.

8 Q. To your knowledge, was -- were any empty bottles of  
9 liquor, such as gin or Tequila or champagne seized or found  
10 inside the residence of 1718 Barclay?

11 A. No, they were not.

12 Q. The interview that occurred on October the 7th that  
13 Ms. Balido has now referred to, you said that you had the  
14 defendant sign Miranda warnings; is that correct?

15 A. Yes.

16 Q. Same type of printed form that you had used on  
17 October 6th?

18 A. Yes.

19 Q. On October 7th, did the defendant indicate to you  
20 that he did not want to talk with you because he had  
21 attorneys appointed for him?

22 A. No, he did not indicate that.

23 MR. DAVIS: May I approach, Your Honor.

24 THE COURT: You may.

25 Q. (By Mr. Davis) Detective Myers, looking at State's

1 Exhibit Number 48, is this the Miranda warnings that you gave  
2 to the defendant on October 7, the year 2000?

3 A. Yes, they are.

4 MR. DAVIS: Your Honor, at this time for all  
5 purposes now we'll offer State's Exhibit Number 48.

6 (State's Exhibit No. 48 offered)

7 MS. BALIDO: Judge, just the -- Judge, is he  
8 just -- just the Miranda warnings; is that correct?

9 THE COURT: It's my understanding. I've not  
10 seen the document.

11 MR. DAVIS: Yes, sir. This is State's Exhibit  
12 Number 48 that we've discussed previously, the Miranda  
13 warnings, Your Honor.

14 THE COURT: Defense have any objection?

15 MS. BALIDO: No objection to the Miranda  
16 warnings, Judge.

17 THE COURT: Admitted.

18 (State's Exhibit No. 48 admitted)

19 Q. (By Mr. Davis) These Miranda warnings again  
20 briefly, they contain the same Miranda warnings; is that  
21 right?

22 A. Yes.

23 Q. Now, at the time that you talked with him on October  
24 7, you had become aware of Ms. Little and Mr. Byck being at  
25 the police department, correct?

1 A. Yes.

2 Q. As a result, did you take some further action with  
3 regards to Miranda warnings on the 7th?

4 A. Yes, I did.

5 Q. What did you do?

6 A. I included five additional questions on the Miranda  
7 sheet.

8 Q. Okay. Reading those now, first of all, did you  
9 write in your own handwriting: Did you meet with a lawyer or  
10 lawyers yesterday? His response was yes; is that right?

11 A. That's correct.

12 Q. Second question that you asked of him was that, does  
13 the lawyer represent you, and he answered yes; is that right?

14 A. That's correct.

15 Q. Thirdly, you asked, did the lawyers advise you not  
16 to talk to police officers, and his response at that time was  
17 no; is that right?

18 A. That's correct.

19 Q. The fourth question being, did the lawyers advise  
20 you to cooperate with police officers, and his answer at that  
21 time was yes; is that right?

22 A. That's correct.

23 Q. And fifthly, will you talk to police officers today,  
24 and his response was yes; is that right?

25 A. That's correct.

1 Q. Had he indicated on that date that he did not want  
2 to talk or that he had been advised not to speak with you,  
3 what would you have done at that time, sir?

4 A. Had he indicated that he did not want to talk to us,  
5 we would have immediately returned him to the jail area.

6 Q. Okay. Now, on October the 11th, which has been  
7 referred to by Ms. Balido, let me show you what has  
8 previously been marked as Defendant's Exhibit Number 3. I'll  
9 now mark that as State's Exhibit Number 50. Ask you to look  
10 at that, sir. Is that the Miranda warnings that you used  
11 with the defendant again on October 11th?

12 A. Yes, it is.

13 Q. And they contain the same Miranda warnings again,  
14 don't they?

15 A. Yes, sir.

16 Q. And at this time did the defendant agree to talk  
17 with you, and did he in fact sign State's Exhibit Number 50?

18 A. Yes, he did.

19 MR. DAVIS: At this time, Your Honor, we will  
20 offer State's Exhibit Number 50.

21 (State's Exhibit No. 50 offered)

22 MS. BALIDO: I haven't seen it, Judge. I  
23 mean, I've seen it in the pretrial hearing, but I haven't  
24 seen it recently. Is it just the Miranda warnings?

25 MR. DAVIS: Just the Miranda warnings.

1 MS. BALIDO: Then we have no objection.

2 THE COURT: Admitted.

3 (State's Exhibit No. 50 admitted)

4 Q. (By Mr. Davis) Finally, sir, looking at what has  
5 previously been marked as Defendant Exhibit Number 4, now  
6 marked as State's Exhibit Number 51, is this the Miranda  
7 warning that you used on October 13, the year 2000?

8 A. Yes, it is.

9 Q. Now, is this the occasion where Mr. Murphy decided  
10 or indicated to you that he didn't want to speak to you any  
11 further?

12 A. That's correct.

13 Q. And this document is not signed by him; is that  
14 right?

15 A. No, it's not.

16 Q. As a result did you try to continue any sort of  
17 interrogation or discussion with the -- with the suspect?

18 A. No, we did not.

19 MR. DAVIS: Your Honor, at this time we'll  
20 offer for all purposes State's Exhibit Number 51, the Miranda  
21 warnings for October the 13th.

22 (State's Exhibit No. 51 offered)

23 THE COURT: Defense have any objection?

24 MS. BALIDO: No objection.

25 THE COURT: Admitted.

1 (State's Exhibit No. 51 admitted)

2 Q. (By Mr. Davis) Finally, let me ask you about some  
3 locations. Richardson Motor Sports. Are you familiar with  
4 that location, sir?

5 A. Yes. Yes, sir, I am.

6 Q. Is that a location in Dallas County, Texas?

7 A. Yes, it is.

8 Q. Are you familiar with the Washington Mutual branch  
9 that's located at 1225 East Belt Line Road in Richardson,  
10 Texas?

11 A. Yes.

12 Q. Is that a location in Dallas County, Texas?

13 A. Yes, it is.

14 Q. Finally, 1718 Barclay Drive in Richardson, Texas, is  
15 that a location in Dallas County, Texas?

16 A. Yes, it is.

17 Q. Finally, 9620 Harry Hines Boulevard in Dallas,  
18 Texas. I believe a Racetrac convenience store is located  
19 there. Is that in Dallas County, Texas?

20 A. Yes, it is.

21 MR. DAVIS: Pass the witness, Your Honor.

22 Recross-Examination

23 By Ms. Balido:

24 Q. Detective Myers, let me ask you: The last time that  
25 you attempted to interview Mr. Murphy was on what day?

1 A. October the 13th.

2 Q. Okay. And since October the 13th, do you have any  
3 additional information that the abduction site is in Dallas  
4 County, State of Texas?

5 A. No.

6 Q. Since October the 13th, do you have any additional  
7 information that the site of Ms. Cunningham's death was in  
8 Dallas County, State of Texas?

9 A. No additional information.

10 Q. Okay. Or do you have any indication that the actual  
11 shot that was fired that killed Ms. Cunningham was in Dallas  
12 County, State of Texas?

13 A. Only by Mr. Murphy's statements.

14 Q. Okay. Just -- but nothing new past the 13th of  
15 October, the year 2000?

16 A. No, ma'am. That's correct.

17 Q. And each one of those times that you went back to  
18 talk with him, he was -- he was cooperative; is that correct?

19 A. Yes.

20 Q. And he did answer your questions; is that correct?

21 A. Yes, he did.

22 Q. In fact, on the face of State's Exhibit Number 48,  
23 he said he had a lawyer, but he still wanted to talk to you;  
24 is that correct?

25 A. That's correct.

1 Q. And did you initiate that conduct or -- that contact  
2 with the defendant or did he write you a letter or indicate  
3 to you that he wanted to talk to you on that date?

4 A. I initiated that contact.

5 Q. Okay. Let me ask you a question. Where did you  
6 learn to write down on the bottom of a Miranda warning  
7 these -- these additional warnings or questions?

8 A. I can't say that I learned it anywhere specific. It  
9 was a matter of experience.

10 Q. Okay. Was it through the experience of other cases  
11 that you worked through the Garland Police Department?

12 A. I would just say it was my experience as a detective  
13 that I knew that that might become an issue later, and I  
14 wanted to address it on October the 7th.

15 Q. Okay. Did you know it was -- through your  
16 experience do you know that it's an issue as to who initiates  
17 the contact in that sort of situation?

18 A. My experience with that would be that once he  
19 indicates he no longer wants to talk to me, then I would  
20 never try to initiate contact with him again from that point  
21 on. It would be his responsibility then.

22 Q. And it is not true --

23 A. To contact me.

24 Q. I'm sorry, I didn't mean to interrupt you.

25 It is not your understanding that you making the



1 attempt to talk with him is a different situation than him  
2 making the attempt to talk with you?

3 A. You're going to have to ask that one again.

4 Q. Okay. In your experience as a Garland police  
5 officer, you've stated that -- that you wrote down these  
6 questions because you knew it could be significant, correct?

7 A. I knew it could become an issue later, yes, ma'am.

8 Q. Okay. Could it also in your experience as a police  
9 officer, do you know that it could also become an issue as to  
10 whether or not you make the contact after counsel has been  
11 appointed or that the defendant or the suspect makes the  
12 contact that he wants to talk further?

13 A. I believe that that could only become an issue once  
14 he invokes his rights.

15 Q. Okay. But in your opinion he did not invoke his  
16 rights based on the answers to these questions?

17 A. That's correct.

18 Q. Okay. Does your experience with -- as being a  
19 detective with the Garland Police Department that you based  
20 your decision to write these questions down, does that  
21 include talking with members of the District Attorneys  
22 Office?

23 A. No, I did not -- I did not talk to members of the  
24 District Attorneys Office about -- about this Miranda sheet  
25 on October the 7th.

1 MS. BALIDO: Judge, I'll pass the witness.

2 MR. DAVIS: No further questions.

3 THE COURT: Thank you, Detective. You may  
4 step down.

5 Ladies and gentlemen of the jury, a matter came to  
6 the Court's attention during one or more of the hearings  
7 outside your presence this morning. We were in here a  
8 considerable amount of time. A matter came to the Court's  
9 contention -- attention about which will necessitate a  
10 hearing so we're going to be here starting tomorrow morning  
11 at 8:30. You however need not be here until 10 o'clock  
12 tomorrow morning.

13 Now, those of you on an individual basis as -- it's  
14 your call, that can go to work, maybe return some phone  
15 calls, handle some correspondence, do matters such as that,  
16 you are allowed to do that. You are not required to do it.  
17 It's just let your conscience be your guide. Whatever your  
18 individual circumstances may be, it's up to you. Please  
19 though be back here at 10 o'clock. We're going to be  
20 resuming hearing matters that came to the Court's attention  
21 which may or may not be brought to your attention, depending  
22 upon evidence presented to me tomorrow morning and findings  
23 of fact that I make in conclusions of law, may or may not be  
24 brought to your attention. At the conclusion of the trial, I  
25 will explain to you what they are, regardless of what the

1 decision may be.

2 See y'all tomorrow morning 10:00 a.m.

3 THE BAILIFF: All rise.

4 THE COURT: Please again recall the  
5 instructions with regard to the media. Very professional  
6 journalist is the young man in the front row to the far  
7 right. And I think Channel 11 is in the back row. Give them  
8 equal time, print and electronic media.

9 (Recess of proceedings.)

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Reporter's Certificate

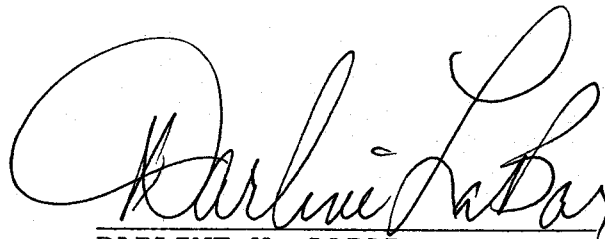
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 28th day of October, A.D., 2001.



DARLINE W. LABAR  
Official Court Reporter  
194th Judicial District Court  
Dallas County, Texas  
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

74145

VOLUME 49 of 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT  
VS. : DALLAS COUNTY, TEXAS  
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

\*\*\*\*\*

TRIAL ON THE MERITS BY JURY

FILED IN  
COURT OF CRIMINAL APPEALS

DEC 5 2001

\*\*\*\*\*

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

HONORABLE BILL HILL, Criminal District Attorney  
Crowley Criminal Courts Building  
Dallas, Dallas County, Texas 75207  
Phone: 214-653-3600

BY: MR. GREG DAVIS, A.D.A., SBOT # 05493550  
MS. MARY MILLER, A.D.A., SBOT # 21453200  
FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210  
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500  
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880  
Dallas County Public Defender's Office  
Phone: 214-653-9400  
FOR THE DEFENDANT.

\*\*\*\*\*

On the 6th day of June, 2001, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable F. Harold Entz, Jr.,  
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer  
assisted transcription.

DARLINE W. LABAR, OFFICIAL REPORTER

ORIGINAL

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## P R O C E E D I N G S

THE COURT: This hearing will be conducted in open court, outside the presence and hearing of the impaneled jury and the alternate.

Let the record reflect the defense, during trial, has presented the Court a Motion to Suppress items seized from the defendant's cell at the Dallas County Jail. The Court has had tendered to it for in camera inspection a packet of materials allegedly consisting of those materials that were seized from the cell in which the defendant, Jedidiah Isaac Murphy, was housed at the time of the seizure. An in camera inspection of those items that have been presented to the Court include and are limited to the following: A number of letters and cards that were sent to Mr. Murphy while he was in the Dallas County Jail reportedly from relatives or friends of Mr. Murphy. There is also a religious tract of approximately 50 or so pages that are somewhat of a workbook with regard to one's individual study of the Holy Bible. Also contained within the packets of materials are three handwritten pages, purportedly, though I know not to be certain, in the hand of Jedidiah Isaac Murphy, written to his attorneys. That comprises the materials that the Court has received.

Absent counsel for either side dictating the contrary into the record, I assume and it is merely an

1 assumption, that the seizure of the materials about which I  
2 made reference was absent a search warrant; am I correct?

3 MS. MILLER: Yes, you are correct, Your Honor,  
4 and I don't know if you would like this Dallas County  
5 Sheriffs Department report by Detective Allwardt from the  
6 Physical Evidence Section marked as an exhibit. For record  
7 purposes, the last line on the first page --

8 THE COURT: Have you shown it to the defense?

9 MS. MILLER: I gave them a copy.

10 MS. BALIDO: This morning, Judge. This is the  
11 first time we've seen it, and that's not her fault.

12 MS. MILLER: They had subpoenaed all the  
13 defendant's records so there we had no reason to believe they  
14 did not already have this. I received this from Sergeant  
15 Lachman when I interviewed him, I believe it was last week or  
16 the week before. The last sentence on that report shows who  
17 collected it and why they collected it, Your Honor. The  
18 State had no knowledge of the collection until I received  
19 this report from Sergeant Lachman. And it was at that time,  
20 because it was not in any of the reports that had already  
21 been tendered to Mr. Davis from the Sheriff's Department,  
22 when I obtained that. That is when we found out that they  
23 had in fact seized these papers. And other than what is in  
24 the report, we had no knowledge as to what these papers  
25 were. That is when we went down to find out since it said

1 they believed they were related to the suicide attempt.

2 THE COURT: With regard to those matters about  
3 which the Court has dictated into the record, has the State  
4 read every one of those documents about which the Court has  
5 made reference? Perhaps not the religious tract, but the  
6 notes from purported family members or friends and the  
7 handwriting document, three pages in length, purportedly  
8 written by Mr. Murphy?

9 MR. DAVIS: The -- I can represent to the  
10 Court that Ms. Miller and I went down. We first looked  
11 through the notes that appeared to be from family members.  
12 Now, we did read those. We did in fact ask the Sheriff's  
13 Department to make copies of those letters for us. They  
14 indicated there was another packet. I looked at that other  
15 packet. Ms. Miller did not. I did -- I briefly scanned  
16 through some of that tract material, religious lessons or  
17 whatever they appear --

18 THE COURT: Journey into Discipleship?

19 MR. DAVIS: Yes, sir, just to make sure that  
20 all of them were consistent and all of them did deal with the  
21 same subject matter.

22 THE COURT: All right.

23 MR. DAVIS: And they did appear to be so. Did  
24 not ask the Sheriffs Department to make a copy of that for  
25 me. I did glance over the other three handwritten pages to

1 determine again if they were related to this suicide or not.  
2 And I noted that the date on that -- I have not viewed that  
3 since the date that we went down to the physical evidence  
4 room, but my recollection was that there was a date on there  
5 from some time ago, either October or November of last year.

6 THE COURT: On page 3, for purposes of the  
7 record, there is in handwriting made by I know not whom  
8 10-21-00, which I take to be October 21st, the year 2000.

9 MR. DAVIS: Yes, sir.

10 THE COURT: That's the only date that I have  
11 seen on --

12 MR. DAVIS: Yes, sir.

13 THE COURT: Basically the three pages  
14 purportedly written by Mr. Murphy about which the Court at  
15 this stage has the most concern.

16 MR. DAVIS: Yes, sir.

17 THE COURT: For a couple of reasons. Number  
18 one, search and seizure problems, if there be any. And,  
19 number two, attorney-client privilege.

20 MR. DAVIS: I looked at that, and I did note  
21 the same date -- the same that the Court had noted. I did  
22 not see -- now, the other matters had been addressed -- his  
23 letters, there were envelopes accompanying those letters.  
24 There were no envelopes accompanying those three pages as I  
25 recall.

1 THE COURT: Correct. Correct.

2 MR. DAVIS: I didn't see an address addressed  
3 as a letter or a kite or any jail communication, and I am  
4 familiar with that having represented clients in jail. I  
5 could not determine from a first glance whether they were a  
6 letter, whether they were notes. I did note, though, at some  
7 stage, and I can't recall at what point in that, that they  
8 did relate -- it appeared to me to the examining trial that  
9 had occurred sometime contemporaneous with those notes. I  
10 glanced at them. I did not have the Sheriff's Department  
11 make a copy of that because it didn't --

12 THE COURT: The three pages?

13 MR. DAVIS: Yes, sir.

14 THE COURT: Of handwriting?

15 MR. DAVIS: I did not have copies of that  
16 document made. I have never had copies made of those  
17 documents.

18 THE COURT: Have you, after glancing or  
19 reading or perusing those three documents, Mr. Davis,  
20 utilized any of the contents of that material in trial  
21 preparation?

22 MR. DAVIS: No, sir, because again, my  
23 recollection of what I did see was that it was -- essentially  
24 it was an allegation that Detective Myers had not been  
25 truthful during the examining trial. That was the gist of

1 what I got from looking at that document, but I --

2 THE COURT: I have not seen the entire  
3 transcript of the examining trial, but there are references  
4 made about the conformity of the table and a microphone --

5 MR. DAVIS: Right.

6 THE COURT: -- and some allegations of that  
7 nature.

8 MR. DAVIS: Right.

9 THE COURT: I concur with the State.

10 MR. DAVIS: No, sir. I didn't -- I didn't see  
11 anything to utilize.

12 THE COURT: All right.

13 MR. DAVIS: Didn't see a need to have a copy  
14 made, and so at the time the only copies that were made were  
15 of the relatives' notes back to the defendant. And again, my  
16 recollection there is that there was nothing in there other  
17 than there was talk about a family history and some medical  
18 problems that -- as I recall, I think that the individual  
19 writing to his mother, some sort of suicide or some sort of  
20 health problems that she was undergoing.

21 THE COURT: Ms. Balido, do you recall when you  
22 joined the defense team? Then I'll tell you why I ask the  
23 question. The reason I -- why you're thinking --

24 MS. BALIDO: Maybe late December, Judge.

25 THE COURT: The reason I made reference to



1 that, the first page begins, "Michael and Jane, parenthesis,  
2 sorry if I've offended you by using your first names," so I  
3 would assume that the letter was -- or the documentation was  
4 generated prior to your coming on board on behalf of the  
5 defense.

6 MS. BALIDO: Yes, that would be correct.

7 THE COURT: Has the defense read or seen --

8 MS. BALIDO: No, sir. We haven't seen  
9 anything.

10 MR. BYCK: No, Your Honor.

11 THE COURT: On the occasions that you have  
12 been up to visit with Mr. Murphy, he's never shared the  
13 contents of this document with you, either post-examining  
14 trial, prior to trial, or at any time?

15 MR. BYCK: Your Honor, to be perfectly candid  
16 with the Court, we did not look at the material that was  
17 given to us by the Sheriff yesterday and marked as  
18 Defendant's Exhibit Number 6. We did not open that envelope  
19 because we did not want to be accused of adding something to  
20 it or taking anything away from it.

21 THE COURT: Before we begin the hearing, let  
22 me invite the defense now to examine these materials which I  
23 have -- those are the entirety of the materials that were  
24 presented to me by Mr. LaPere in the defense presence.

25 MS. BALIDO: Judge, also in regard to the

1 report tendered by counsel, we would object to the Court  
2 considering the truth of the matter asserted in that report  
3 for purposes of findings of facts and conclusions of law in  
4 this hearing, and -- and we would like to be heard --

5 THE COURT: Fine. That's the purpose of this  
6 hearing. We're going to air it all out.

7 MS. BALIDO: Okay. And so we would -- since  
8 we did not know this document existed, although we did issue  
9 a subpoena from the Sheriff's Department to turn over any and  
10 all reports regarding any incident in the jail regarding our  
11 client, I would --

12 THE COURT: Well, we may be making a mountain  
13 out of a molehill. I'm not suggesting we are. Let me invite  
14 the defense to examine those materials.

15 MR. BYCK: Let me go xerox this. It will make  
16 it easier for us --

17 MS. BALIDO: Judge, my only concern is that if  
18 there's a search and seizure, the true -- the issue of  
19 whether or not these things were seized related to a suicide  
20 attempt and the policies of seizing these items in a suicide  
21 attempt may become an issue in the trial. And just like  
22 leave of the Court, if I could try to go get in touch with  
23 Deputy Branch or Deputy -- or Detective Allwardt.

24 THE COURT: Fine. You -- we are going to  
25 begin -- continue the trial on the merits at 10 o'clock. I

1 have given you an hour and a half. I would ask that you --

2 MS. BALIDO: Judge, I don't understand -- I  
3 don't understand what I can do other than call him the second  
4 I get this report. And I got it this morning. I've asked  
5 for it numerous occasions from the State.

6 THE COURT: There are three of you in the  
7 courtroom. That's why I have three defense attorneys.

8 MS. LITTLE: We still just got it this  
9 morning, Judge.

10 THE COURT: Fine. One of you -- you have an  
11 investigator, you have a staff on the Public Defenders  
12 Office. Numerous times there's only one of the public  
13 defenders in court during the voir dire.

14 MS. LITTLE: I beg your pardon?

15 THE COURT: At numerous times during jury  
16 selection there was only one public defender in the  
17 courtroom.

18 MS. LITTLE: Well, I don't know what the Court  
19 is directing to.

20 THE COURT: Well, what I'm suggesting is all  
21 three of you have been in here during this hearing when one  
22 of you or your investigators could have been contacting those  
23 that you want. Just inefficiency in time is what I'm  
24 suggesting.

25 MS. LITTLE: Well, we just got the report this

1 morning, Judge.

2 THE COURT: Are you ready?

3 MS. BALIDO: Ready, Judge.

4 THE COURT: Good morning, Sheriff. May I ask  
5 you to raise your right hand.

6 (Witness sworn.)

7 THE COURT: Thank you, sir.

8 Let the record reflect this hearing continues to be  
9 conducted in open court, outside the presence and hearing of  
10 the impaneled jury and one alternate. The defendant,  
11 Jedidiah Isaac Murphy, is in court during this hearing.

12 Counsel may proceed.

13 CHARLES MCKINNEY

14 was called as a witness by the Defendant and, after having  
15 been first duly sworn, testified as follows:

16 Direct Examination

17 By Ms. Balido:

18 Q. Can you please state your name for the record?

19 A. Charles McKinney.

20 Q. And, sir, what do you do for a living?

21 A. I'm employed by Jim Bowles, Sheriff of Dallas  
22 County.

23 Q. And how long have you been employed by the Sheriff's  
24 Department?

25 A. 36 years.

1 Q. And what is your present assignment for the  
2 Sheriff's Department?

3 A. I'm Assistant Chief Deputy in Charge of Detention  
4 Inmate Housing.

5 Q. And when you talk about detention inmate housing,  
6 you're talking about when people are accused of crimes or  
7 convicted of county crimes, they're actually housed in the  
8 Dallas County Jail; is that correct?

9 A. That's correct.

10 Q. Okay. And are you familiar with the policies and  
11 procedures regarding the Dallas County Jail?

12 A. Pretty much so, yes, ma'am.

13 Q. And especially regarding the inmate -- the inmate  
14 housing procedures or the policies regarding inmate housing  
15 that are used in everyday procedures in the Dallas County  
16 Jail?

17 A. Yes, ma'am.

18 Q. Okay. Let me ask you a question in regard to inmate  
19 property in the cells. Okay? I understand that you seize  
20 property once somebody is booked into the Dallas County Jail;  
21 is that correct?

22 A. That's correct.

23 Q. Okay.

24 A. Certain property.

25 Q. Certain property. And that is -- what -- what

1 happens to that property?

2 A. It goes into the vault in the inmate's property  
3 file.

4 Q. Okay. Now -- now -- now that we've established  
5 that, I don't want to talk about that type of property.

6 A. All right.

7 Q. What I want to talk about is I want to talk about  
8 property that is either sent into the jail by someone outside  
9 the jail, and I'm talking about letters or papers or  
10 newspaper articles and that sort of thing --

11 A. Okay.

12 Q. And also paperwork or letters that are made by the  
13 inmate himself while he's inside the jail. Okay?

14 A. Okay.

15 Q. Does the Dallas County Jail have a policy regarding  
16 the seizure of those types of writings, things that are  
17 either sent in by U.S. mail or by -- well, let's start out  
18 just sent in by U.S. mail?

19 A. Yes, it does have policy.

20 Q. Can you tell me what that policy is?

21 A. Any privileged mail will not be opened except in  
22 front of the inmate himself. And it will not be read, but  
23 can be searched for contraband.

24 Q. Okay.

25 A. Privileged mail being mail from the courts,

1 attorneys, public officials such as senators, President of  
2 the United States, and so forth. Non-privileged mail,  
3 letters from loved ones, friends, and so forth, can be opened  
4 for contraband.

5 Q. Okay. So basically -- let me ask you about the  
6 policy of the Dallas County Sheriffs Department in regard to  
7 non-privileged mail first.

8 A. Okay.

9 Q. You said it's opened to determine whether or not  
10 there's contraband?

11 A. Correct.

12 Q. Is it also opened for the purpose of reading the  
13 content of the letters themselves?

14 A. As a general rule, no. But it can be, yes.

15 Q. Okay. So as a general rule those letters are not  
16 read?

17 A. Correct.

18 Q. And when is there an exception to that rule?

19 A. Usually under court order.

20 Q. Okay. A court order or if there's like a search  
21 warrant that you feel like it's necessary?

22 A. Correct. Right.

23 Q. All right. In regard to privileged mail from  
24 attorneys, I would suppose it would be from attorneys if it  
25 was evident from the outside of the envelope that it was from

1 an attorney; is that correct?

2 A. Correct.

3 Q. And the other people that you mentioned, can you  
4 tell me about the policy of opening that for contraband? Are  
5 those regularly opened for contraband?

6 A. It's opened in front of the inmate.

7 Q. Okay. And tell me the policy of the Dallas  
8 Sheriff's Department in regard to reading that mail?

9 A. It is not read. Privileged mail is not read.  
10 Searched -- the envelope or box, whatever it would be in  
11 would be searched for contraband only.

12 Q. Okay. Are there any exceptions to that rule that  
13 you know of?

14 A. No, ma'am.

15 Q. Have you ever been asked by a court -- that you know  
16 of, you or anyone you know of been asked by a court or court  
17 order to seize that mail and read that mail, the privileged  
18 mail?

19 A. Any mail that ever come in on any inmate?

20 Q. Yes.

21 A. Not to my knowledge.

22 Q. Okay. Let me ask you in regard to -- is there ever  
23 an occasion that in the regular practice of the Dallas  
24 Sheriff's Department that papers made by the inmate would be  
25 seized by the Dallas Sheriff's Department?



1 A. Are they any instances where it could be?

2 Q. Yes.

3 A. Yes, ma'am.

4 Q. Okay. Could you tell us what those instances are?

5 A. I could think of possibly three. One would be under  
6 a court order issued by a Judge directing us to for some  
7 reason. Number two, and I'm talking about inmate housing  
8 employees seizing it. Possibly if the volume of paperwork  
9 became so great in a particular cell that it should become  
10 either a safety or health hazard, it could be removed and put  
11 in the inmate's property in the vault. It would be a very  
12 rare occasion, but it could happen. Thirdly, and it would  
13 not be by employees of the detention housing bureau, but if  
14 it should become -- the cell become a crime scene for some  
15 reason, then the evidence could be confiscated either by our  
16 Physical Evidence Section or Criminal Investigation Division  
17 in regards to this crime scene.

18 Q. Okay. And when you talk about crime scene, would a  
19 crime scene include an attempted suicide?

20 A. Yes, it would.

21 Q. Okay. When I talked to you on the telephone  
22 yesterday, I guess, I didn't make myself clear when I asked  
23 if there was any kind of procedure as to whether or not  
24 someone's property would be seized if he tried to commit  
25 suicide. Do you remember me asking you that?

1 A. You didn't mention suicide whatsoever.

2 Q. Okay. Did you talk with the District Attorneys  
3 Office after I talked with you yesterday?

4 A. No, I have not.

5 Q. Okay. Let me ask you if you know what the procedure  
6 is regarding seizure of writings that are made by the person  
7 in jail, the inmate, but looks like it's addressed to a  
8 lawyer or after reading the contents of the letter, you find  
9 out that it's basically to the person's lawyer, do you have  
10 any policy about reading that or seizing that or anything  
11 like that?

12 A. Detention housing bureau does not open any mail  
13 that's addressed to an attorney.

14 Q. Okay. Now, you mentioned that the inmate housing  
15 employees could seize different items at different times.

16 A. Yes, ma'am, that's correct.

17 Q. And can you tell us when that would occur?

18 A. Well, I'll repeat the three things I just said if  
19 you want me to. One is if it's under a court order.

20 MS. MILLER: Your Honor, we object.

21 THE COURT: No, it's repetitious.

22 Q. (By Ms. Balido) So those are the only reasons that  
23 the inmate housing would -- would seize these items?

24 A. To my knowledge, that should be the only reasons,  
25 yes, ma'am.

1 Q. Okay. Let me ask you also --

2 THE COURT: Could you get a little more  
3 specific on the issue at hand, please? This particular  
4 document as opposed to the global policy of the Dallas  
5 Sheriff's Department.

6 MS. BALIDO: Judge, we're trying to establish  
7 that he has a reasonable expectation to privacy, and that's  
8 what this is going to.

9 THE COURT: Have you read the cases involving  
10 this, counsel?

11 MS. BALIDO: I have, Your Honor.

12 THE COURT: What have you read?

13 MS. BALIDO: I have read that in situations  
14 where inmate property is housed or seized at the time that  
15 they actually go into the jail, that is not privileged, that  
16 is not -- or that is not garnered --

17 THE COURT: To the specific issue at hand.

18 MS. BALIDO: The specific issue at hand,  
19 Judge, about property inside a cell where there are cases  
20 that say that a defendant does have a reasonable expectation  
21 of privacy and there are some cases that say they don't have  
22 a reasonable expectation of privacy. I'm -- but it's up to  
23 the subjective beliefs of the defendant. I'm trying to  
24 establish what the policies are and then establish what --

25 THE COURT: Okay. Let's move on.

1 Q. (By Ms. Balido) Do you know --

2 THE COURT: I've got a United States Supreme  
3 Court case and a Ninth Circuit case that are pretty  
4 persuasive.

5 MS. BALIDO: Is that the same Ninth Circuit  
6 case, Judge, that I cited on our Batson motion?

7 THE COURT: United States versus Hitchcock,  
8 467 F.2d 1107, and Alonzo versus New York, 82 Supreme Court  
9 1218.

10 MS. BALIDO: And, Judge, is that the same  
11 Ninth Circuit that I cited on our Batson motion which you  
12 said was the most overruled court by the Supreme Court?

13 THE COURT: That's true.

14 Q. (By Ms. Balido) Do you know anything about the  
15 seizure of property of Jedidiah Isaac Murphy by Dallas  
16 sheriffs officers?

17 A. No, ma'am, I do not.

18 Q. Okay. And under your understanding did any inmate  
19 housing official seize this property or seize any property  
20 from Jedidiah Isaac Murphy after he was booked into jail?

21 A. You say did?

22 Q. I'm asking if you have any knowledge of that?

23 A. I just said, no, ma'am, I do not.

24 Q. After there is material seized for either -- for any  
25 one of the reasons that you talked about, what is the normal

1 practice of what to do with that property?

2 A. If it's in their court order, we'd do whatever the  
3 Judge directed, either put it in our property evidence or  
4 turn it over to the courts or whoever the Judge directed it  
5 to be turned over to, number one. Secondly, as I said awhile  
6 ago, if for some reason should become such a large volume of  
7 paperwork, that became a safety hazard or health hazard, it  
8 would be put in the inmate's property in our vault. Thirdly,  
9 if it become a crime scene, then the Physical Evidence  
10 Section, the Criminal Investigation Section would confiscate  
11 it and put it in the Dallas Sheriff's Office property room as  
12 evidence of that crime scene.

13 Q. And in that regard on the third thing that we talked  
14 about with the crime scene, would that be held within the  
15 Dallas Sheriff's Department or would it be immediately turned  
16 over to the Dallas District Attorneys Office? Or do you  
17 know?

18 A. It would be put in Dallas Sheriff's Office  
19 initially. Now, how long it stayed there, I would have no  
20 knowledge.

21 Q. Along those lines again, Chief McKinney, you  
22 wouldn't ordinarily -- well, what would be the regular  
23 practice, if you know, if it was seized by the crime scene  
24 and investigators and put into the records, or what happens  
25 to it after that?

1 A. I wouldn't have any knowledge.

2 Q. Okay. Let me ask you one more thing. Is it the  
3 regular practice, or are you aware of any exception or -- let  
4 me start totally over.

5 Are you aware of any time that a member or members  
6 of the Dallas District Attorneys Office has attempted to  
7 seize letters coming into the jail, and I'm talking about  
8 non-privileged letters, for the purpose of use in that  
9 person's trial?

10 MS. MILLER: Your Honor, we're going to object  
11 to relevance as far as this hearing goes.

12 THE COURT: Overruled. You may answer.

13 MS. MILLER: Because it has nothing to do with  
14 the way these were seized.

15 THE COURT: You may answer, Sheriff.

16 A. On any inmate at any time, since 1946, Dallas  
17 Sheriff's Office, you're talking about?

18 Q. (By Ms. Balido) I'm asking if you know if sometimes  
19 the D.A.'s call up the Sheriff's Department and ask to see --

20 THE COURT: Let him answer -- let him answer,  
21 Ms. Balido.

22 A. I'm just trying to clarify you talking about going  
23 back any time.

24 Q. (By Ms. Balido) Uh-huh.

25 A. Okay.

1 Q. Is that a yes?

2 A. No, I haven't answered. I'm trying to think if I  
3 can recall any. My personal knowledge, I don't recall, to my  
4 knowledge.

5 Q. Does the Dallas Sheriff's Office have any policy  
6 regarding turning over inmate mail, not privileged inmate  
7 mail, to the Dallas District Attorneys Office upon their  
8 request?

9 A. To my knowledge, it would be under subpoena or court  
10 order.

11 Q. And you'd be surprised if they got it any other way?

12 A. I'd be surprised.

13 MS. BALIDO: I'll pass the witness, Judge.

14 Cross-Examination

15 By Ms. Miller:

16 Q. Sergeant McKinney, I just have just a couple  
17 questions for you. Since you're the Assistant Chief Deputy;  
18 is that right?

19 A. Yes, ma'am. That's right.

20 Q. And how long have you had that position?

21 A. About 10 or 11 years.

22 Q. Okay. And can you tell this Court whether having a  
23 razor blade, an inmate having a razor blade in his cell is  
24 against the rules and regulations?

25 A. No, ma'am, it's not against rules and regulations.

1 Q. How about a razor blade not within a razor?

2 A. No, ma'am.

3 Q. Okay.

4 MS. MILLER: I don't have any other questions,  
5 Your Honor.

6 THE COURT: Ms. Balido.

7 MS. BALIDO: Judge, I have a couple more  
8 questions.

9 Redirect Examination

10 By Ms. Balido:

11 Q. To your knowledge, Chief McKinney, on the control  
12 center or in the control center on the third floor of the  
13 Dallas Sheriff's Department, of the West Tower -- third  
14 floor, West Tower Control Center, to your knowledge, is there  
15 a sign that says "all incoming and outgoing mail from  
16 Jedidiah Isaac Murphy, Book-in Number 00089253, is to be sent  
17 to Chief McKinney's office"?

18 A. I have no knowledge of it. I can assure you no mail  
19 has never been sent to me at any time.

20 MS. BALIDO: I have no further questions,  
21 Judge.

22 MS. MILLER: The State has nothing further,  
23 Your Honor.

24 THE COURT: Thank you, Sheriff.

25 THE WITNESS: Thank you, Judge.



1 MS. BALIDO: Judge, if I could go check on my  
2 messages and see --

3 THE COURT: You may.

4 (Recess taken.)

5 MS. BALIDO: Judge, I do have one thing I can  
6 put on the record while we're waiting.

7 THE COURT: All right.

8 MS. BALIDO: Judge, comes now the defendant,  
9 Jedidiah Isaac Murphy, at this time to make a motion for  
10 mistrial based on the following reason: Off the record the  
11 Judge has said on numerous occasions that he's concerned  
12 about the wasting of the jury's time. The defense does  
13 appreciate that. However, on the record yesterday, the Court  
14 made two comments that concerns the defense. First, when the  
15 defense objected to the oral statements in front of the  
16 jury -- being brought in front of the jury, the Court made  
17 the comment that such objection had been heard and considered  
18 outside the record by the Court and had been overruled and  
19 that you overruled it again. We believe that that  
20 constituted a comment on the weight of the jury --

21 THE COURT: Weight of the jury?

22 MS. BALIDO: Constituted a comment on the  
23 weight of the evidence to such a degree that an instruction  
24 either at this time either in the jury instructions not to  
25 consider any comment from the Court as being a comment on the

1 weight of the evidence, that that cannot be cured.

2           Additionally, during the cross-examination of  
3 Detective Myers, the Court sua sponte asked if what I was  
4 asking was relevant and I needed to hurry it along. I  
5 believe that that constituted a comment on the weight of the  
6 evidence to which no instruction can cure. And we would  
7 respectfully ask for a mistrial at this time.

8           THE COURT: The Court denies it. And  
9 specifically with regard to number one, I call counsel's  
10 attention to the fact that outside the jury's presence I told  
11 them that by virtue of that ruling there would be no need for  
12 them to make a further objection once the jury had returned  
13 to the courtroom. Number two, with regard to the matter  
14 about which counsel makes reference, I call counsel's  
15 attention to Texas Rule Of evidence 611, paragraph A, I have  
16 control of the court. And when I feel that time is being  
17 unnecessarily consumed which I on the record wish to state  
18 outside the jury's presence that I think the defense was  
19 doing yesterday, I am going to side on behalf of the jury and  
20 move this trial along. Cross-examination should not be  
21 limited in the Court's opinion to a mere recitation or a  
22 repeat of the questions that the prosecutors have asked the  
23 witness.

24           MS. BALIDO: Judge, in response to your  
25 response to number one, I do believe that through the reading

1 of the cases that I have in preparation of this case and  
2 other appeal -- and appeals that I have filed, that even  
3 though the Court did grant a running -- a running objection,  
4 that it was my duty to object in front of the jury. And  
5 since that is going to be a jury issue in this case as to the  
6 admissibility of the confession, that I thought it was  
7 necessary on the record to make my objection at the time.

8 THE COURT: Counsel, you do what you feel is  
9 necessary in the courtroom, and I'll do likewise.

10 Have a hearing on the photographs. The State may  
11 begin.

12 MR. DAVIS: Yes, Judge. Your Honor, the  
13 proffer will be in front of the jury. I do intend to offer  
14 State's Exhibits, I believe -- defense counsel has them. I  
15 believe that they are 42 -- I'm sorry, they are going to be  
16 State's Exhibit 55 through 63, Your Honor. And the State's  
17 position is that they are necessary, that they are probative  
18 of several different issues. First of all, the manner and  
19 means of death. They will be probative as to exposure, state  
20 of decomposition. Also going to go to really the nature of  
21 this offense, the place in which the defendant left this  
22 body, goes to his state of mind, disregard for the safety and  
23 the well-being of this individual, allowing her to be exposed  
24 to aquatic life, to other wildlife out there in that  
25 location. So we certainly believe that they are relevant,

1 that they are probative. There is no duplication in these  
2 photographs. The photographs of the body as a whole I  
3 believe the Court has reviewed that is fully clothed. The  
4 only bare skin showing then will be actually extremities and  
5 the head and the face portion of the photographs. For those  
6 reasons, we do intend to offer State's Exhibit 55 through 63,  
7 Your Honor.

8 THE COURT: The defense wishes to be heard.

9 MR. BYCK: Yes, Your Honor. May it please the  
10 Court.

11 Your Honor, we would have no objections to State's  
12 Exhibit Number 58. State's Number 58, as I'm showing to the  
13 Court, shows a gunshot wound to the forehead.

14 We would have no objection to State's 59, likewise  
15 showing a gunshot wound to the cranial area.

16 We would have no objection to State's 60, showing  
17 three wounds on the top of the scalp.

18 We have no objection to State's 61 in that it shows  
19 bruising on the upper arm.

20 We have no objection to State's 63, some abrasions.

21 And finally, we have no objection to State's 55,  
22 Your Honor, as it does show the complete body. And I don't  
23 believe that there is an alternative photograph to that.

24 We would object to -- pardon me, Your Honor, and in  
25 reference to the last number, what was that?

1 THE COURT: 55.

2 MR. BYCK: In -- okay. 62. Your Honor, we  
3 would strenuously object to State's Exhibit Number 56 and  
4 especially State's Exhibit Number 57. Your Honor, careful  
5 examination of State's 57 shows no gunshot wound. It does  
6 not show any track of a bullet. It shows nothing except what  
7 happened to the victim well after the fatal shot wound was  
8 inflicted. While it may be relevant to prove the nature of  
9 the offense, what it really shows, Your Honor, is that an  
10 action done by an independent force, that is, aquatic life in  
11 that stream. That there are -- its probative value is far,  
12 far outweighed by the obvious, obvious gruesome nature of the  
13 photographs. We submit, Your Honor, that they would only  
14 be -- especially the full face photograph, I think that's  
15 57, would only be offered to inflame the jury, to show the  
16 terrible depredations that occurred. While it could  
17 theoretically be argued, Your Honor that, that there's some  
18 element of foreseeability in here, we would strenuously argue  
19 that there really is not, that -- that the actor, the  
20 perpetrator of the murder, could in no way foresee the  
21 depredations that occurred to that body afterwards, that --

22 THE COURT: The State care to be further  
23 heard?

24 MR. DAVIS: Well, I just cite to the Court the  
25 State did previously file a response to defendant's motion in

1 limine. And in those cases I believe the Court probably has  
2 reviewed that autopsy photographs are generally admissible  
3 unless they depict mutilation of the victim caused by the  
4 autopsy itself. Obviously, these were not caused by the  
5 autopsy. They're caused by the direct actions of this  
6 defendant in making a conscious decision to leave this woman  
7 exposed in a creek in which there is water. And those  
8 injuries are a direct result of his actions in this case.

9 THE COURT: Mr. Byck, you wish further to be  
10 heard?

11 MR. BYCK: Yes, Your Honor.

12 Your Honor, we would submit that Luis versus  
13 Texas -- we do not have a citation on that, would be more  
14 than happy to provide the Court a copy from the Court of  
15 Criminal Appeals, TC Number 00-41-003. It's number 73,281 in  
16 the Court of Criminal Appeals. The Court of Criminal Appeals  
17 decided almost this exact situation. With these gruesome  
18 photographs, the Court of Criminal Appeals ordered the trial  
19 court that they should consider the number of photographs  
20 that are available, the size of the photograph, and that size  
21 by the way, Your Honor, is approximately 11 and a half inches  
22 by 7 and three-quarter inches. That's the unmounted size.  
23 They are in color. The detail shown is absolutely graphic.  
24 The photograph is obviously gruesome. And that body has been  
25 altered since the crime in some way that might enhance the

1     gruesomeness of the photograph to the defendant's detriment.

2             Now, Your Honor, we would finally object to State's  
3     Exhibit Number 62, stating that there would be alternative  
4     methods of proving the wounds or actually the bruises, Your  
5     Honor, in State's Exhibit Number 62 by two photographs that  
6     we will have marked as Defendant's 7 and 8 that could be  
7     proved by the information contained in Defendant's 7 and 8  
8     provided for us by the District Attorneys Office. Those are  
9     other photographs that do not show the head portion, but show  
10    the bruises on the shoulder.

11            THE COURT: The State has the right to close  
12    the argument before the Court makes its ruling.

13            MR. DAVIS: Well, again --

14            THE COURT: Anything further, Mr. Davis?

15            MR. DAVIS: Just drawing your attention with  
16    regard to his argument about the photograph being gruesome,  
17    I'm sure the Court is aware of the May v. State, 2000  
18    decision out of the Court of Appeals here in Dallas, in which  
19    the Court stated that although photographs may be gruesome,  
20    that fact alone does not render them more prejudicial than  
21    probative. In this particular case that is not even the  
22    standard in an autopsy photograph. Actually it's whether the  
23    probative value is substantially outweighed by the danger of  
24    unfair prejudice, and I would state that they are not in this  
25    case.

1 THE COURT: In anticipation that the State  
2 will offer State's Exhibit 58, 59, 60, 61, and 63, if  
3 offered, assuming the defense makes no objection, they have  
4 indicated that they do not anticipate, they will be admitted  
5 into evidence. The Court will permit the introduction of  
6 State's Exhibit Number 62, but only if the top three inches  
7 of the picture is redacted. And the defense objections at  
8 this point on 56 and 57 are granted.

9 MR. BYCK: We thank the Court.

10 THE COURT: Sheriff, may we have the jury,  
11 please.

12 The Court wishes the record to reflect that the  
13 Court utilized, as is required by the Court of Criminal  
14 Appeals, under the case Long v. State, 823 S.W.2d 259, Rule  
15 403, balancing test with regard to evaluating counsels'  
16 objections and the offer.

17 THE BAILIFF: All rise.

18 THE COURT: Let the record reflect the jury is  
19 returning to the courtroom at this time.

20 (Jury returned to courtroom.)

21 THE COURT: Jury may be seated.

22 Ladies and gentlemen in the gallery, you may be  
23 seated.

24 The State may proceed.

25 MR. DAVIS: The State will call Dr. Jennie



1 Duval, Your Honor.

2 THE COURT: Good morning. Ask you to raise  
3 your right hand, please.

4 (Witness sworn.)

5 THE COURT: Thank you, Doctor.

6 MR. DAVIS: Good morning.

7 THE COURT: You may continue.

8 DR. JENNIE DUVAL

9 was called as a witness by the State and, after having been  
10 first duly sworn, testified as follows:

11 Direct Examination

12 By Mr. Davis:

13 Q. Would you please tell us your full name?

14 A. Yes. It's Dr. Jennie Duval. J-e-n-n-i-e,  
15 D-u-v-a-l.

16 Q. Are you a medical doctor?

17 A. I am.

18 Q. Dr. Duval, can you tell the members of the jury how  
19 you're presently employed?

20 A. I'm a medical examiner in the Dallas County Medical  
21 Examiners Office. That's here in Dallas.

22 Q. How long have you been with the Medical Examiners  
23 Office here in Dallas?

24 A. It will be two years in August.

25 Q. What is your position presently?

1 A. I'm an assistant medical examiner.

2 Q. And as such what are your duties and  
3 responsibilities?

4 A. Mainly to perform autopsies. We also do some  
5 teaching, medical students that rotate through, residents,  
6 our own fellows that are in training in our office, testify  
7 in court, give lectures, that sort of thing.

8 Q. If you don't mind, would you briefly tell us about  
9 your educational and professional training?

10 A. My college degree is from the University of New  
11 Hampshire. I then obtained my medical degree, my M.D. from  
12 McGill University. That's in Montreal, Quebec. I then  
13 completed a four-year pathology residency at the University  
14 of Massachusetts Medical Center, followed by two years of  
15 forensic pathology training at the Boston Medical Examiners  
16 Office, followed by another year surgical pathology training  
17 back at the University of Massachusetts Medical Center, which  
18 I finished in June of '99. Then I started here about a month  
19 later.

20 Q. Now, I believe that you told us that one of your  
21 primary duties would be to perform autopsies. Is there a  
22 general procedure that's used when you do an autopsy?

23 A. Yes, basically every autopsy is the same. We may do  
24 additional studies and tests, depending on the case.

25 Q. Could you briefly discuss the procedure that you

1 would use on an autopsy?

2 A. Yes, in a homicide or suicide type of autopsy, we  
3 always photograph the body as it's received in the office.  
4 Then we'll search for trace evidence on the clothing and the  
5 hands, fingernails. We may take x-rays, depending on the  
6 case. If there's a gunshot wound or a stab wound, we're  
7 looking for retained bullets or metal objects. We would then  
8 strip the body, clean it off as best we could and again take  
9 photographs and in particular photographs of any injuries or  
10 evidence of disease that we might find. Then we would draw  
11 blood for toxicology, sometimes eye fluid, and all that is  
12 done before we start the internal examination of the autopsy.

13 The internal examination involves making incisions  
14 into the body so that we can look at the body organs for  
15 evidence of disease or injury so we would look at the heart,  
16 the lungs, the brain, so forth. We may save pieces of tissue  
17 to look at microscopically. We may save other body fluids  
18 such as bile and urine to look for toxicology, drugs of  
19 abuse, prescription drugs that are in the system. We may  
20 take other specimens for microbiology studies if we suspect  
21 an infectious disease. Those are the sorts of tests that we  
22 do routinely.

23 Q. When a body comes into your office for an autopsy,  
24 is a unique case number assigned to it?

25 A. Yes, a case number.

1 Q. Would that -- would that case number follow any  
2 evidence perhaps that you had gathered during your autopsy,  
3 would it maintain that same unique case number if it had been  
4 analyzed by someone else out there at your office?

5 A. The same case number -- as soon as the body is  
6 received into the office, the body is tagged with that  
7 number. All the paperwork that's generated, the autopsy  
8 report, any other reports from the toxicology lab or the  
9 crime lab all have that same number on it.

10 Q. Now, on or about October the 6th of 2000, did you  
11 perform an autopsy on an individual that you later came to  
12 know as Bertie Cunningham?

13 A. Yes, I did.

14 Q. And did you in fact perform the autopsy and then  
15 prepare an autopsy report of your findings in that matter?

16 A. Yes, I did.

17 MR. DAVIS: May I approach, Your Honor.

18 THE COURT: You may.

19 Q. (By Mr. Davis) Doctor, I'm showing you now State's  
20 Exhibit Number 54. If you would, review that document and  
21 tell me if it's a copy of the autopsy report that you  
22 prepared in this case.

23 A. Yes, it is.

24 MR. DAVIS: Your Honor, at this time we will  
25 offer State's Exhibit Number 54, the autopsy report.

1 (State's Exhibit No. 54 offered)

2 MR. BYCK: We have no objection at this time,  
3 Your Honor.

4 THE COURT: Admitted.

5 (State's Exhibit No. 54 admitted)

6 Q. (By Mr. Davis) Dr. Duval, in this case can you tell  
7 us the case number that was assigned to this autopsy?

8 A. Yes, the case number is -- it has the prefix  
9 JP3564-00.

10 Q. Now, if we could in this -- in this particular case  
11 did the body come accompanied by clothing? It was clothed  
12 when it came to your office, correct?

13 A. The body was fully dressed and also accompanied by  
14 other articles of clothing.

15 Q. Yeah. Did you examine the body for personal effects  
16 such as jewelry?

17 A. Yes.

18 Q. Was any jewelry with the body when it came to your  
19 office?

20 A. No.

21 Q. No rings?

22 A. No rings.

23 Q. No watches?

24 A. No.

25 Q. Had they accompanied the body, would you have noted

1 that in your report?

2 A. We always note whatever the body comes in with, any  
3 clothing, any personal effects, any jewelry is always  
4 described in the report.

5 Q. Did you see any indication during your examination  
6 of the victim's fingers that she had at one time been wearing  
7 a ring?

8 A. Yes, on the left ring finger there's a -- the skin  
9 was pale as if a ring had been worn there.

10 Q. Can you tell me the overall condition of this body?  
11 How would you describe that?

12 A. The body was in early to moderate state of  
13 decomposition so the body had been dead for some time.  
14 Postmortem changes had already set in. In particular because  
15 the body was found in water, there was some postmortem  
16 changes related to aquatic animals. In this case probably  
17 turtles, fish, crab, same sort of thing. So these animals  
18 will accelerate the decomposition process. The body had some  
19 skin slippage. That's one of the early changes of  
20 decomposition when the skin starts to slough off. There was  
21 also fixed liver mortis, which is the settling of blood in  
22 the body after death. And after a period of several hours,  
23 it becomes fixed in position. It was absent rigor mortis,  
24 this is, when the body comes stiff after death. That's a  
25 transient thing. After several hours, 8 to 12 hours, it

1 remains full -- full rigor mortis for about another 12 hours  
2 or so, and then it starts to dissipate. And there was no  
3 rigor mortis, so these are all changes that occur after death  
4 and indicate that she had been dead for some time.

5 Q. Now, was it your understanding that the body had  
6 been found in a creek?

7 A. Yes.

8 Q. Was the appearance of the body consistent with that  
9 history?

10 A. Yes.

11 Q. Now, when you talk about decomposition, you said  
12 that -- did I understand you to say that it was apparent that  
13 the individual had been dead for some period of time?

14 A. Yes.

15 Q. Generally can you tell us when decomposition might  
16 set in after death?

17 A. Well, these postmortem changes all begin  
18 immediately. Blood begins to settle. The rigor mortis  
19 starts to develop. But once you start reaching the skin  
20 sloughing off, once you start having the extensive aquatic  
21 animal activity that I saw, you're talking at least a day,  
22 maybe three days, somewhere in that ball park.

23 Q. And I believe your examination took place at 11:30  
24 in the morning on October the 6th, correct?

25 A. Correct.

1 Q. So the condition would have been consistent with Ms.  
2 Cunningham having been dead for between one and three days at  
3 that point; is that right?

4 A. That's my opinion, yes.

5 Q. Now, first of all, as you examined the body, did you  
6 look for external injuries?

7 A. Yes.

8 Q. And if you would, can you tell us and tell the  
9 members of the jury the types of external injuries that you  
10 noted?

11 A. Yes, there were a number of injuries. Some of them  
12 appeared postmortem like this animal activity. There was  
13 also a gunshot wound to the head that was clearly obvious.  
14 There were some bruises on the upper arms and the backs of  
15 the upper arms. There was a bruise on the right side of her  
16 chest. And there were some abrasions across her upper  
17 abdomen and left side of her chest or abdomen. Those two  
18 abrasions or scrapes appeared to be postmortem also. There  
19 was also some lacerations of the scalp. And I believe that's  
20 all the injuries we identified.

21 Q. When we talk about lacerations, are we talking about  
22 cuts, some injury that would actually cut the skin in some  
23 way?

24 A. Well, I prefer to use the word "split." The skin is  
25 split. It's not cut as if with a knife. It's a rupture of



1 the skin from impact against a hard object, so it could be a  
2 flat surface, could be a rock, any hard surface would cause a  
3 laceration. And these -- these were splits over the top of  
4 the scalp. They are called lacerations. And these again  
5 appeared to be postmortem.

6 Q. Did you take photographs to document these injuries?

7 A. Yes.

8 MR. DAVIS: May I approach, Your Honor.

9 THE COURT: You may.

10 Q. (By Mr. Davis) Doctor, looking at State's Exhibits  
11 58, 59, 60, 61, 62, 63, and finally State's Exhibit Number  
12 55, let me ask you, do these -- well, if I may --

13 MR. DAVIS: May I approach the bench for just  
14 a moment, Your Honor.

15 THE COURT: You may.

16 Q. (By Mr. Davis) And finally State's Exhibit Number  
17 55, do you recognize these to be photographs that were taken  
18 during the autopsy of Ms. Cunningham?

19 A. Yes.

20 Q. Do you believe that they would aid you in your  
21 testimony to this jury concerning the injuries that were  
22 inflicted, as well as the cause and the manner and means of  
23 death of Ms. Cunningham?

24 A. Yes.

25 MR. DAVIS: Your Honor, at this time we will

1 offer State's Exhibit 55, 58, 59, 60, 61, 62 and 63.

2 (State's Exhibit No. 55 and 58 thru 63 offered)

3 MR. BYCK: We have no objections to the offer  
4 pursuant to the Court's previous rulings.

5 MR. DAVIS: And if I could approach counsel  
6 for just a moment on one matter there.

7 MR. BYCK: Very well.

8 MR. DAVIS: Are they admitted?

9 THE COURT: They are admitted.

10 (State's Exhibit No. 55 and 58 thru 63 admitted)

11 MR. DAVIS: Thank you. May the witness please  
12 step down.

13 THE COURT: She may.

14 (Witness leaves the stand.)

15 Q. (By Mr. Davis) Dr. Duval, if we could, the first  
16 photograph that we're going to see here was taken of Ms.  
17 Cunningham again during her autopsy; is that correct?

18 A. That's right.

19 Q. Was -- in this photograph do we see her still  
20 clothed as she was when she came in for examination by your  
21 office?

22 A. This is the as is photograph we take as the body is  
23 received into the office.

24 Q. Okay.

25 (Exhibit published to jury.)

1 Q. (By Mr. Davis) And again, this photograph would  
2 note several different injuries, wouldn't it?

3 A. Yes.

4 Q. Will it first of all note injuries to her face, as  
5 well as to her left arm?

6 A. Yes.

7 Q. Those injuries again being of what nature?

8 A. Those are consistent with postmortem aquatic animal  
9 activity, turtle bites.

10 Q. I believe that you noted in your testimony earlier  
11 that you had seen a gunshot wound to Ms. Cunningham's head;  
12 is that correct?

13 A. That's correct.

14 Q. State's Exhibit 58 that we're about to show to the  
15 jury, will this show that gunshot wound?

16 A. Yes, it does.

17 Q. Again, the location of that wound was, what, right  
18 the right portion of the forehead; is that right?

19 A. Yes, it's actually just behind the hairline. The  
20 hair has been shaved above the wound in this picture.

21 Q. State's Exhibit 59, would this be another photograph  
22 from a different angle showing that same gunshot wound?

23 A. Yes, this is a close-up view of that same gunshot  
24 wound.

25 Q. Now, before we show this to the jury, when you

1 examine a gunshot wound, the entry wound, sometimes can you  
2 make some sort of determination about how close the end of  
3 the barrel of that gun was to the skin at the time that it  
4 was fired?

5 A. Yes, we can determine if a wound is contact, either  
6 tight contact or loose contact meaning the muzzle of the  
7 weapon is right up against the skin either tightly or  
8 loosely. We can say it's close range if we see soot  
9 deposited around the wound. In a handgun close range is  
10 about 6 inches or less. We can say if it's an intermediate  
11 range, if we see gunpowder stippling. This is a impact of  
12 gunpowder against the skin surface around the wound. That's  
13 from unburned particles of powder coming out of the muzzle of  
14 the weapon, usually about 1200, 1500 feet per second.

15 THE REPORTER: I'm sorry, ma'am. I can't hear  
16 you.

17 A. Gunpowder stippling is when unburned powder grains  
18 come out of the muzzle of the weapon and they strike the skin  
19 at a very high velocity and they cause little scrapes in the  
20 skin and sometimes embedded in the skin. This is  
21 intermediate range, and that occurs somewhere between six  
22 inches and two feet in most instances. Beyond two feet we  
23 don't see soot. We don't see gunpowder stippling. We just  
24 see the hole, the entrance wound. And those we call distant  
25 wounds, distant meaning greater than two feet.

1 Q. Now, the gunshot wound to Ms. Cunningham first shown  
2 in State's Exhibit Number 58, were you able to make some  
3 determination about the distance of that particular gunshot?

4 A. Yes.

5 Q. State's Exhibit Number 59, again, showing that  
6 gunshot wound, how did you term this particular gunshot  
7 wound, tight contact, loose contact, intermediate, or  
8 distance?

9 A. This would be a loose contact gunshot wound.

10 Q. And if you would, is there something about this  
11 photograph that would assist the jury in understanding how  
12 you made that sort of determination?

13 A. Yes. In the photograph you see this round black --  
14 it looks like a hole and actually the central part is the  
15 hole and all around the edge is imbedded soot and imbedded  
16 gunpowder, so -- and it makes a very nice distinct ring  
17 around the wound. It's very close. It's not dissipated at  
18 all. And this occurs with a loose contact type of wound.

19 Q. And loose contact again would that actually mean  
20 that the barrel of the gun is actually against the skin, but  
21 it's not being pressed down into the skin; would that be  
22 fair?

23 A. That's exactly what it means.

24 Q. It's actually making contact with the point where we  
25 now see this wound; is that right?

1           A.     Right.  If it's a tight contact wound, the soot  
2     would be driven into the wound.  You wouldn't see any on the  
3     skin surface around the hole.  It would all be inside the  
4     wound, and there was nothing inside the wound.

5           Q.     State's Exhibit Number 61, I believe that you -- or  
6     State's Exhibit Number 60, I'm sorry.  I believe you earlier  
7     had said that you found some evidence of lacerations to the  
8     top portion of Ms. Cunningham's skull; is that right?

9           A.     Yes.

10          Q.     The jury now looking at State's Exhibit Number 60.  
11     Would these injuries, Doctor, be consistent with the head  
12     coming in contact with some hard and sharp object?

13          A.     More hard than sharp.  It's not consistent with a  
14     knife for example.  It could be any hard object.  These are  
15     blunt force injuries.

16          Q.     Uh-huh.  How about a jagged rock for instance?

17          A.     That could do it.

18          Q.     Can we tell from State's Exhibit Number 60 whether  
19     this is prior to the death of Ms. Cunningham or after death  
20     has occurred?  Is there any way of telling?

21          A.     Yes, these -- these lacerations or splits in the  
22     skin have a very sort of greyish yellow appearance.  You  
23     don't see a rim of red scraping around the -- which would --  
24     tells us there's a vital reaction, meaning the bleeding  
25     around the -- there is no blood within them.  There's no

1 blood around them, so these are consistent with postmortem  
2 lacerations.

3 THE COURT: Ms. Little, did you want reference  
4 to what that number was?

5 MS. LITTLE: Yes.

6 THE COURT: What number was that?

7 MR. DAVIS: That was State's Exhibit Number  
8 60.

9 MS. LITTLE: Thank you.

10 THE COURT: Did you hear that, Ms. Little?

11 MS. LITTLE: Yes, sir.

12 Q. (By Mr. Davis) Looking now at State's Exhibit  
13 Number 61, what portion of the body are we now looking at?

14 A. This is her upper abdomen, just below the rib cage.

15 Q. What sort of injuries -- how would you describe  
16 these particular injuries on State's Exhibit 63?

17 A. These are called abrasions or scrapes of the skin.  
18 This is very superficial. They have a yellowish orange kind  
19 of color to them. Again, indicating that they are  
20 postmortem. They are also patterned. There's a pattern to  
21 them, parallel vertical lines. It's very consistent with the  
22 waistband of her pants, so it looks like these are postmortem  
23 abrasions from her pants.

24 Q. Would these particular injuries be consistent with  
25 Ms. Cunningham's body having been dragged across some

1 surface?

2 A. Or any manipulation of her clothing would give the  
3 same appearance.

4 Q. So if her body weren't moving, but somehow her  
5 clothing is being moved over her body, that could cause these  
6 scratches, also?

7 A. Yes.

8 Q. Again, that's postmortem, after death?

9 A. Yes.

10 Q. State's Exhibit Number 61, what is the jury looking  
11 at now? What types of injuries? First, I guess this is to  
12 the right chest; is that right?

13 A. That's right.

14 Q. Okay.

15 A. This is the right side of her chest. Her arm has  
16 been raised above her head so you can see this bruise, down  
17 here. It's a contusion. This one is reddish purple. It's  
18 fairly small. It's in the same line as her bra, her bra  
19 line. And this is -- because it has color in its appearance,  
20 it's more likely to be antemortem. This is an injury that  
21 occurred before death.

22 Q. Would you describe this as a -- as some sort of  
23 sharp force injury or blunt force injury?

24 A. This is blunt. There's no break in the skin. This  
25 is just impact, either something impacted her or she's



1 impacted some other blunt object.

2 Q. Okay. Would it be consistent with someone taking a  
3 fist, for instance, and striking her with a closed or open  
4 fist of some sort, or would it be consistent with her having  
5 been pushed up against an object to cause a bruise, or what  
6 sorts of actions would be consistent with having caused these  
7 injuries?

8 A. It's not patterned enough to say that this looks  
9 like a fist or a slap. It's more nonspecific. It's more  
10 banging up against something. It's your typical bruise that  
11 you might get just from bumping up against something.

12 Q. Perhaps the side of a car?

13 A. Could be.

14 Q. A trunk lid, some sort of object of that nature?

15 A. Yes.

16 Q. Again, that's prior to death, correct?

17 A. Yes.

18 Q. State's Exhibit Number 62, if you would, take this  
19 please, Doctor, and describe to the members of the jury the  
20 type of injury.

21 A. This is -- occurred left arm, closer to left  
22 shoulder. It has been pulled across the chest, and you're  
23 looking at a bruise outside back of that left upper arm. And  
24 again, this is a bruise. It's larger than the other one.  
25 It's purplish, reddish purple, bluish. It's all consistent

1 with being an antemortem or before death bruise. Again, it's  
2 blunt force injury, bumping up against something.

3 Q. Now, when we look at State's Exhibit 61 and 62, you  
4 told us that you believe that they occurred prior to death.  
5 Would you have an opinion as to whether or not these are  
6 recent bruises, or did they occur days before Ms.  
7 Cunningham's death?

8 A. No, these look like fresh -- fresh bruises. Could  
9 have been minutes before her death to not days -- days you  
10 start to see changes in the bruise.

11 Q. Does the appearance and coloring change over time --

12 A. Yes, it does.

13 Q. -- the bruises? Would these bruises be consistent  
14 with having been produced at or near the time of her death?

15 A. They're consistent with that, yes.

16 Q. Go ahead and have a seat.

17 (Witness retakes the stand.)

18 Q. (By Mr. Davis) I want to talk to you a bit more  
19 about the gunshot wound, Dr. Duval. You've told us that you  
20 believe it was loose contact. Can you tell us the path that  
21 the bullet took once it entered Ms. Cunningham?

22 A. So it enters the scalp just behind the hairline, on  
23 the right side. It perforates the underlying skull bone,  
24 frontal bone. It perforates the brain -- the frontal lobe of  
25 the brain, just deep to that. It keeps traveling slightly

1 downwards, slightly backwards, perforating the left temporal  
2 lobe of the brain so it crosses the midline and strikes the  
3 left side of the brain as well. Strikes a bone on the floor  
4 of the skull, and then becomes imbedded in that same left  
5 temporal lobe of the brain. And that's where I recovered the  
6 bullet from. So the path of the bullet is right to left,  
7 slightly downwards, and slightly front to back.

8 Q. Do you have an opinion as to whether this particular  
9 gunshot wound would have caused the death of Ms. Cunningham?

10 A. Yes, it did cause the death of Ms. Cunningham.

11 Q. Do you have an opinion about how quickly death would  
12 have occurred in this case? For instance, do you believe  
13 that Ms. Cunningham in all likelihood died instantly, or is  
14 it medically probable that she remained conscious and alert  
15 for a period of time?

16 A. It's been my experience and experience of others,  
17 and in fact there are several case reports of individuals  
18 sustaining these small caliber gunshot wounds to the head  
19 that affect the front half of the brain, and they remain  
20 conscious and able to shoot themselves again in a suicide  
21 type attempt, or just recover. Usually they're left with  
22 severe neurological deficits, major problems, but they can  
23 recover, they can remain breathing spontaneously for some  
24 time. Yes.

25 Q. Okay. During the time that Ms. Cunningham would

1 have remained conscious, do you have an opinion as to whether  
2 she still would have had the ability to feel physical pain?

3 A. I believe she would.

4 Q. Okay. Do you have an opinion as to the nature and  
5 to the degree of the pain that she would have been suffering  
6 as a result of this gunshot wound?

7 A. I don't think I can quantitate how much pain she was  
8 feeling. I believe she could have remained conscious for  
9 several minutes. And when you're conscious, you feel pain.  
10 And so whatever other injuries she sustained at that time,  
11 the pain from the scalp and the wound in the scalp, she would  
12 feel.

13 Q. And while conscious, would she be aware of her  
14 surroundings for instance?

15 A. Probably, yes.

16 Q. Assuming that -- assuming that she had been shot in  
17 the trunk of an automobile and that trunk was then closed on  
18 her while she's conscious, for instance, would she have the  
19 ability to appreciate that she was now locked inside of a  
20 trunk?

21 A. I believe she would.

22 Q. You mentioned a moment ago the toxicology tests are  
23 run routinely on bodies. Were they run in this case?

24 A. Yes, they were.

25 Q. Can you tell us the types of tests that were run?

1       A.    We routinely test for alcohol, such as ethanol, the  
2 alcohol we drink; cannabinoids which is marijuana; and  
3 general drug screen, looking for different classes of drugs,  
4 as well as an opiate screen looking for heroin and other  
5 drugs in that family. We look for cocaine. We look  
6 generally for drugs of abuse. We also pick up a number of  
7 different prescription and non-prescription medications.

8       Q.    In this case, the screen for marijuana or  
9 cannabinoid, was it negative or was it positive?

10      A.    It was negative.

11      Q.    No signs of any drug use, was there?

12      A.    Correct.

13      Q.    As a matter of fact, you ran a complete drug screen  
14 and that also came back negative, right?

15      A.    Correct.

16      Q.    Now, when you looked at alcohols and acetones, did  
17 you find a small amount of ethanol alcohol?

18      A.    There was a very small amount of ethanol, 0.01  
19 percent. This is -- I believe it's attributed to  
20 decomposition. We see low levels of alcohol with  
21 decomposition because of the bacterial action and they  
22 produce alcohol. It's equivalent -- if you're thinking about  
23 drinks and blood level, it's equivalent to less than one  
24 drink of alcohol, less than one beer, less than one shot of  
25 liquor, less than one glass of wine. It's a very small

1 amount, and I believe it's postmortem.

2 Q. So in this case you believe that that resulted from  
3 the decomposition, having been out in the conditions for some  
4 time before the body was brought in to your lab; is that  
5 right?

6 A. That's right.

7 Q. Now, during the autopsy itself, did you recover the  
8 bullet that had caused that gunshot wound to Ms. Cunningham?

9 A. Yes.

10 MR. DAVIS: May I approach, Your Honor.

11 THE COURT: You may.

12 Q. (By Mr. Davis) Doctor, let me show you now what is  
13 marked as State's Exhibit 63A, and if you would take a look  
14 at that object and tell me whether or not this is the bullet  
15 that you recovered during the autopsy of Ms. Cunningham.

16 A. It is. As I described it, it's a small caliber  
17 deformed lead bullet. I inscribed the case number and my  
18 initials on the base of the bullet, and I filled out this  
19 envelope, placed it in the envelope, sealed it, and submitted  
20 it to the crime lab myself. This is the same bullet.

21 Q. Okay. Thank you.

22 MR. DAVIS: Your Honor, at this time we will  
23 offer State's Exhibit 63A.

24 (State's Exhibit No. 63A offered)

25 MR. BYCK: No objection to 63A.

1 THE COURT: Admitted.

2 (State's Exhibit No. 63A admitted)

3 MR. DAVIS: May I publish briefly?

4 THE COURT: You may.

5 Q. (By Mr. Davis) Again, this is a .22 caliber bullet;  
6 is that correct? Is that your opinion, or do you have an  
7 opinion as to the caliber?

8 A. Small caliber. It's consistent with a .22 caliber  
9 bullet.

10 Q. Doctor, based upon the findings of your autopsy, as  
11 well as the history provided to you, again, did you come to a  
12 conclusion as to the cause of death in this matter?

13 A. Yes, I did.

14 Q. And can you tell us what opinions did you form?

15 A. I believe Bertie Cunningham died of a gunshot wound  
16 to the head, and that it's a homicide.

17 Q. And her death then would have been consistent with  
18 having been shot with a firearm; is that correct?

19 A. That's correct.

20 Q. Did you feel since her body had been found in water,  
21 that drowning caused any part of her death after review of  
22 all the material?

23 A. Well, like I said, people can survive for a period  
24 of time, these small caliber gunshot wounds to the head if it  
25 doesn't affect the vital structures in the brain. So if you

1 have a gunshot to the front half -- frontal lobes of the  
2 brain, you can survive for several minutes or longer. So  
3 that if she had been dumped in the water immediately and had  
4 still been alive and conscious and breathing, then she  
5 certainly could have drowned. Drowning could have  
6 contributed to her death.

7 Q. So as I understand in this case you cannot  
8 absolutely rule out that drowning in water may also have been  
9 a contributory cause to her death; is that right?

10 A. That's right.

11 MR. DAVIS: Again, may I approach, Your Honor.

12 THE COURT: You may.

13 Q. (By Mr. Davis) Finally, Dr. Duval, if you could,  
14 please look at State's Exhibit Number 2. Looking at the case  
15 number, does this appear to be a photograph that was taken of  
16 Bertie Cunningham at or near the time of her autopsy?

17 A. Yes. This is a black and white identification  
18 photo. We take these of every autopsy we do.

19 MR. DAVIS: Again, just for record purposes,  
20 we'll offer State's Exhibit 2.

21 (State's Exhibit No. 2 offered)

22 MR. BYCK: No objection, record only.

23 THE COURT: Admitted.

24 (State's Exhibit No. 2 admitted)

25 MR. DAVIS: I'll pass the witness, Your Honor.



1 MR. BYCK: May it please the Court.

2 Cross-Examination

3 By Mr. Byck:

4 Q. Dr. Duval, my name is Michael Byck, and I represent  
5 Jim Murphy in this trial. I have not been to medical  
6 school. I have absolutely no background in the hard  
7 sciences, so if I ask you a naive question or an untutored  
8 question, please tutor me, if you would be so kind.

9 A. Okay.

10 Q. Doctor, I want to prove that Bertie Cunningham died  
11 of drowning. What medical evidence is there to prove that?  
12 First of all, let's start at the beginning. What would you  
13 expect to find in an individual who had died by drowning?  
14 What physical evidence would you expect to find that you  
15 could show in a picture or show to the jury or show to me?

16 A. Well, as I'm sure you're aware, there are no good  
17 pathologic findings of drowning. When we determine the cause  
18 of death to be drowning, a lot of it is based on  
19 circumstance. There are some changes that go along with  
20 drowning, such as heavy wet lungs from inhaling water, such  
21 as water in the stomach, such as water in the sinuses of the  
22 brain, the air spaces in the brain being filled with water.  
23 These things go along with drowning, but you can also see  
24 them in people that have died and then been dumped in water.  
25 Also, people can drown and have dry lungs, because the

1 larynx, the upper part of your airway can just reflexly  
2 close. It's a defense mechanism so you don't inhale water.  
3 And then you essentially suffocate because you still can't  
4 get air. So there are no good hard and fast medical findings  
5 in drowning.

6 Q. Are there any good hard and fast medical findings in  
7 the autopsy of Bertie Cunningham that would show drowning?

8 A. That would show drowning?

9 Q. Yes.

10 A. No, her lungs were not particularly heavy. They  
11 were a little bit heavy, but that can also be from pulmonary  
12 edema or fluid in the lungs from having the brain injury.  
13 There was no water in the stomach. In fact, the gastric  
14 contents were pretty dry. There was a dry food bullous. The  
15 sinuses in the brain and with the nose, they were filled with  
16 blood from the gunshot wound, so I don't have good evidence  
17 that she drowned, except that she was clearly in the water.  
18 We have the postmortem animal activity that also shows that  
19 she was face down in the water or at least the left side of  
20 her face was in the water. So I can't conclude that she  
21 drowned. I can only speculate that it may have contributed  
22 to her death.

23 Q. Okay. And that by your word is speculation?

24 A. Yes.

25 Q. It has no medical foundation, no medical basis aside

1 from the body being found in the water, of course?

2 A. That's true.

3 Q. Okay. Now, you said that it was a gunshot wound,  
4 close contact wound to the head, and the bullet, if I  
5 understood you correctly, did not hit any vital structures in  
6 the brain?

7 A. Well, your brain is vital, but there's some parts of  
8 the brain that are more vital than others. There's the brain  
9 stem which controls your respiration or your breathing,  
10 controls your heart rate, it controls everything. If there's  
11 a injury to the brain stem, you're going to die instantly.

12 Q. Was there an injury to the brain stem?

13 A. No.

14 Q. And you said in small caliber gunshot wounds like  
15 this, that it is possible for the individual to remain alive  
16 for a matter of minutes?

17 A. Or longer.

18 Q. Or longer.

19 A. In -- sometimes in a comatose state.

20 Q. Would -- do you have any evidence to show that Ms.  
21 Cunningham was alive for any amount of time after that bullet  
22 penetrated her skull and wound up on the other side of it?  
23 Is there any evidence at all?

24 A. Well, she did develop some bruising on the base of  
25 the brain, and that is a consequence of the brain swelling.

1 And the brain is confined in the skull, so that when it  
2 swells, it gets pushed against the hard surfaces of the base  
3 of the skull. So there had to be time for the brain to  
4 swell, time for these bruises on the base of the brain to  
5 develop, so I do believe she survived for a few minutes  
6 anyway.

7 Q. Were those bruises noted in your autopsy?

8 A. Yes, they are.

9 Q. And where are they noted?

10 A. Page 3.

11 Q. Uh-huh.

12 A. "Associated injuries," the fourth paragraph down.

13 There I describe herniation contusions of the bilateral  
14 parahippocampal gyri, and fracture contusions of the  
15 bilateral inferior frontal lobes.

16 Q. Now, is there any possible way you can tell this  
17 jury how probable it was that she survived for a couple of  
18 minutes or any amount of time, or would that be a relatively  
19 rare thing with the profound injury that she had with that  
20 bullet?

21 A. Well, it's not rare. I've had several cases of  
22 individuals that have shot themselves more than once in the  
23 head. I've coauthored a paper on it. And we then --  
24 literature search and found other cases reported in the  
25 literature. So it's not -- I wouldn't call it rare. It is

1 uncommon, but it's not rare.

2 Q. So it's not common at all?

3 A. Okay. Not common.

4 Q. And in all the literature that you researched very  
5 carefully for your professional paper, you only found a  
6 couple of other cases?

7 A. No, we found several others.

8 Q. Well, how many is several?

9 A. Probably a dozen, maybe 15 to 20. I'd have to pull  
10 the paper.

11 Q. Out of how many possible gunshot wound homicides?

12 A. Well, people don't report ordinary gunshot wounds so  
13 I can't give you the denominator.

14 Q. Okay. You do see the importance in what I'm asking,  
15 don't you?

16 A. Yeah, I mean, I -- there's just no way to know for  
17 certain if she survived. I'm saying it's possible, and I've  
18 seen it personally.

19 Q. Okay.

20 A. And --

21 Q. But it is again a mere possibility, and not a  
22 probability, right?

23 A. Okay. I'll give you that. It's a -- it's a good  
24 possibility. Is it the most likely possibility? Maybe not.

25 Q. Okay. Doctor, finally -- well, perhaps not finally,

1 but you listed the cause of death as a gunshot wound to the  
2 head?

3 A. Yes.

4 Q. Right? Not drowning in water?

5 A. In my conclusion in my report I state that drowning  
6 may have contributed to her death.

7 Q. Okay. And the conclusion in your report -- is the  
8 possibility that you mentioned a very important possibility?

9 A. Important in terms of?

10 Q. Important to communicating to the District Attorney  
11 the cause of death, important to communicating to the jury  
12 exactly what killed Ms. Cunningham? Was it important?

13 A. It's important enough that I put it in my  
14 conclusion.

15 Q. Would it be important enough to put in your death  
16 certificate that you sent to the Judge Ozelle Wilcoxson?

17 A. It's not -- that's not a death certificate we send.  
18 The death certificate in out of county cases is completed by  
19 the justice of the peace. We are just a consultant. So I  
20 am --

21 Q. Just a second, Doctor.

22 MR. BYCK: May I have this document marked?

23 (Defendant's Exhibit No. 9 marked)

24 Q. (By Mr. Byck) Please pardon me for interrupting  
25 you, Doctor. You were saying that it wasn't important enough

1 to tell Judge Wilcoxson about, right?

2 A. I don't think I said anything close to that.

3 Q. Well, what did you say?

4 A. I said that I do not complete death certificate on  
5 out-of-county cases. I send a cause of death statement to  
6 them, an opinion as to the cause of death.

7 Q. Okay. Let me show you Defendant's Exhibit Number 9.  
8 That document look familiar to you?

9 A. Yes.

10 Q. What is that?

11 A. This is the cause of death sheet that is completed  
12 the day of the autopsy and sent to the police investigating  
13 agency, as well as the justice of the peace who referred the  
14 case.

15 MR. BYCK: Offer Defendant's 9 provided by the  
16 State.

17 (Defendant's Exhibit No. 9 offered)

18 MR. DAVIS: No objection.

19 THE COURT: Admitted.

20 (Defendant's Exhibit No. 9 admitted)

21 Q. (By Mr. Byck) So you don't ordinarily include  
22 speculation in your cause of death certificates?

23 A. No.

24 Q. Okay.

25 MR. BYCK: Permission to publish, Your Honor.

1 THE COURT: Granted.

2 MR. BYCK: Ladies and gentlemen of the jury,  
3 this is Defense Exhibit Number 9. It speaks for itself.

4 Q. (By Mr. Byck) So there was no brain stem injury; is  
5 that correct?

6 A. None that I could see grossly.

7 Q. If you suspect a brain stem injury, is there  
8 something more that you can do than gross examination?

9 A. There's subtle things that can happen in the brain  
10 with any kind of trauma that we can't see by looking at the  
11 brain. All I can say is that half of the bullet was not  
12 close to the brain stem.

13 MR. BYCK: I have no further questions of this  
14 witness.

15 MR. DAVIS: No further questions, Your Honor.

16 THE COURT: Thank you, Doctor. You may step  
17 down. You may be excused, subject to recall.

18 THE WITNESS: Okay.

19 MR. DAVIS: The State will call Lonnie --  
20 Lannie Emanuel.

21 THE COURT: Good morning. Ask you to raise  
22 your right hand.

23 (Witness sworn.)

24 LANNIE EMANUEL

25 was called as a witness by the State and, after having been



1 first duly sworn, testified as follows:

2 Direct Examination

3 By Mr. Davis:

4 Q. Sir, would you please tell us your full name?

5 A. Lannie G. Emanuel.

6 Q. And how are you employed?

7 A. I'm employed with the Southwestern Institute of  
8 Forensic Sciences. That's sometimes referred to as SWIFS or  
9 the Dallas County Crime Laboratory.

10 Q. What position do you hold out there?

11 A. I'm a firearm and toolmark examiner.

12 Q. Can you tell us just a little bit about what a  
13 firearms and a toolmark examiner does?

14 A. Some of my duties would include the examination of  
15 firearms, examination of ammunition and ammunition  
16 components, microscopic examination of questioned bullets,  
17 cartridge cases, and toolmarks. I'm also responsible for  
18 serial number restorations, distance determinations, fraction  
19 matches, and examination of security devices.

20 Q. Can you briefly tell us your professional  
21 educational background and training?

22 A. My formal training in firearm and toolmark  
23 identification came while I was on active duty with the U.S.  
24 Army. This was a two-year resident court of instruction that  
25 began in 1979. After successful completion of the course, I

1 was assigned to several of the laboratories within the United  
2 States Army crime laboratory system, the first being at Fort  
3 Gordon, Georgia. I was then transferred to Fort Gillam,  
4 Georgia, which is just located outside of Atlanta. I had a  
5 tour of duty at the European laboratory located in Frankfurt,  
6 Germany. After returning to Fort Gillam in 1990, I decided  
7 to retire and come to work for Dallas County. I have  
8 attended training on almost a yearly basis related to the  
9 field of firearm and toolmark identification.

10 Q. Sir, specifically in this case was an autopsy bullet  
11 submitted to you for examination?

12 A. Yes, it was.

13 Q. State's Exhibit Number 63A, a bullet, should be in  
14 front of you. Do you see it up there?

15 A. Yes.

16 Q. Is that the bullet that you were asked to examine in  
17 this matter?

18 A. Yes, it is.

19 Q. First of all, Mr. Emanuel, were you able to  
20 determine the caliber of that bullet?

21 A. Yes, I was.

22 Q. And what were your findings?

23 A. My examination revealed that this is consistent with  
24 a .22 caliber bullet.

25 Q. What other findings did you make in this case with

1 regard to that particular bullet?

2 A. Another examination that we would conduct is try to  
3 determine the class characteristics of the bullet. In other  
4 words, this bullet has been fired through a weapon, and the  
5 barrel will leave certain marks on the bullet and these  
6 marks -- the combination of marks will allow us to determine  
7 a variety of different guns -- of weapons that the bullet  
8 possibly could have been fired through. And I did that in  
9 this case.

10 Q. Now, if we had a weapon, if we had a .22 caliber  
11 pistol in our possession, would you be able to make some  
12 determination about whether that particular bullet was fired  
13 from a particular .22 caliber pistol?

14 A. Yes.

15 Q. How would you do that?

16 A. That would be based on the individual  
17 characteristics that the barrel leaves on the bullet as it's  
18 fired. Though microscopic in nature, we use a comparison  
19 microscope to take a known bullet fired through a suspect  
20 weapon and compare it to the questioned bullet or the marks  
21 on the questioned bullet. Provided there are sufficient  
22 marks left on the bullet itself, we can make a determination  
23 as to whether or not it was fired in that particular gun.

24 Q. Was a weapon ever submitted to you for comparison  
25 purposes with State's Exhibit Number 63A?

1 A. No, no weapon was ever submitted.

2 Q. As a result, you can't tell what particular weapon  
3 fired that bullet, can you?

4 A. No, I have no individual weapon to compare it to.

5 Q. Now, a .22 caliber pistol, would that be a firearm?

6 A. Yes.

7 Q. And would a firearm be a deadly weapon?

8 A. Yes.

9 Q. Thank you, Mr. Emanuel.

10 MR. DAVIS: I'll pass the witness, Your Honor.

11 Cross-Examination

12 By Ms. Balido:

13 Q. Mr. Emanuel, my name is Jennifer Balido, and I don't  
14 know if we've ever talked before in a courtroom setting, but  
15 I'm going to ask you some questions about your testimony.

16 First thing, did you make a report?

17 A. Yes, I did.

18 Q. Okay. I may have just misplaced my copy. Do you  
19 have it with you?

20 A. Yes, I have a copy if you'd like.

21 MS. BALIDO: May I approach the witness.

22 THE COURT: You may.

23 (Copy given to defense counsel.)

24 MS. BALIDO: Judge, may I have one second.

25 THE COURT: You may.

1 Q. (By Ms. Balido) Let me ask you a question, Mr.  
2 Emanuel, about -- about some of your training and kind of  
3 what you do to keep up with the literature at SWIFS. Are  
4 there periodicals that you read and articles that you read  
5 regarding handgun and handgun safety?

6 A. On a daily basis I do an examination of weapons, and  
7 that leads to questions sometimes that I go into reference  
8 and what we would call research. And in answer to your  
9 question, yes, in that nature.

10 Q. Okay. In your research or in your reading that you  
11 do for your profession, have you ever come across a term  
12 called "sympathetic firing"?

13 A. Sympathetic discharge? Yes.

14 Q. Sympathetic discharge. Can you explain to the jury  
15 what that is?

16 A. Sympathetic discharge is a term that describes a  
17 condition when a revolver would have a cylinder loaded with  
18 ammunition. I don't know if everyone is familiar with a  
19 revolver, but it's a handgun that has a cylinder and there's  
20 holes drilled in the cylinder and each hole has ammunition in  
21 it. For the weapon to fire, the ammunition has to be brought  
22 in line with the barrel. Behind that there's a hammer that  
23 then strikes the cartridge causing it to fire, forcing the  
24 bullet out of the barrel. When you have a sympathetic  
25 discharge, you have a fire and the recoil of the weapon will

1 actually cause the cylinder to be forced back against the  
2 frame and sometimes, if all conditions are right, the weapon  
3 can actually fire from another one of the holes in the  
4 cylinder not aligned with the barrel.

5 Q. Let me also ask you if you have come into contact  
6 with the situation where sometimes someone could be  
7 holding -- and maybe this may be just -- we're talking about  
8 two different things. Let me ask you this. Have you ever in  
9 your literature heard about the term "unintentional  
10 discharge"?

11 A. That is a term that I have used from time to time.

12 Q. Okay. And is it consistent with the way that you've  
13 used it that in some situations and most of the research is  
14 done on actual police officer shooting -- shooting another  
15 individual, that it can be the situation that someone is  
16 holding a gun with one hand and either grabbing for or doing  
17 something with the other hand and there's an unintentional  
18 discharge on the hand that's holding the gun?

19 A. When you say unintentional discharge, the way I  
20 would use that term is actually it's the shooter's intent and  
21 that's normally something that a firearms examiner -- there's  
22 no examination that I could do to determine the shooter's  
23 intent. The weapon discharged. And if it's unintentional,  
24 perhaps the shooter did not intend to fire the weapon, but  
25 then it did.

1 Q. Okay. And so like you said, that's something a  
2 firearms person would not be involved in, the actual intent  
3 of the shooter?

4 A. That's correct.

5 Q. Okay.

6 MS. BALIDO: I'll pass the witness.

7 THE COURT: Anything further from the State?

8 MR. DAVIS: Yes, sir.

9 Redirect Examination

10 By Mr. Davis:

11 Q. As I understand the pistol, the trigger has to be  
12 pulled before the gun discharges, correct?

13 A. That is correct.

14 Q. So an individual has to put a finger on that trigger  
15 and actually has to pull the trigger back before it will  
16 discharge and actually fire?

17 A. That is correct.

18 Q. Now, as I understood when Ms. Balido talked to you  
19 about sympathetic discharge, did I understand you to say that  
20 that would occur after the trigger had been pulled once?

21 A. That sympathetic discharge, as I described earlier,  
22 occurs at the exact moment of firing. The cartridge case is  
23 struck by the hammer, which ignites the powder inside the  
24 cartridge case which causes a tremendous release of gases  
25 which is actually what forces the bullet out the barrel.

1 There's a reaction to that bullet being forced out the barrel  
2 in that the cylinder will be forced back or slapped back  
3 against the frame of the revolver. And so a lot of times  
4 when the sympathetic discharge will occur, it will give the  
5 appearance that it was at the same time, but you actually  
6 have two cartridges fired, one bullet going down the barrel,  
7 the other going out beside or actually striking the front  
8 part of the frame or where the barrel is attached to the  
9 frame.

10 Q. All right. So this second bullet in a chamber  
11 that's not aligned, okay, that will not fire on its own  
12 unless the individual holding that pistol actually pulls the  
13 trigger to discharge the bullet that is aligned, correct?

14 A. That is correct.

15 Q. Thank you, sir.

16 MR. DAVIS: That's all the questions.

17 THE COURT: Ms. Balido.

18 Recross-Examination

19 By Ms. Balido:

20 Q. Again, Mr. Emanuel, it must be that I'm -- that  
21 where my confusion is I may be saying wrong and I'm certainly  
22 no firearms expert and I haven't read all the literature  
23 about this.

24 We talked about sympathetic discharge, and then we  
25 also talked about the unintentional firing. Let me ask you



1 if you're aware of -- under the term of unintentional firing,  
2 if you have read anything or are aware of anything about what  
3 is called sympathetic contraction? What I'm talking about,  
4 when the muscles of one limb exert a maximum or near maximum  
5 force, the same muscles in the opposite limb can be  
6 involuntary activated as well. Have you heard of that?

7 A. I think I understand what you're talking about now.

8 Q. Okay.

9 A. Which is the sympathetic discharge was completely  
10 off of what you were asking.

11 Q. Okay. And like I say, I'm not an expert so I don't  
12 know.

13 A. Yes, and I don't know the exact term for that. I  
14 have been to a class and had exposure to training. And what  
15 she's discussing is at one time police officers were not  
16 trained to have their guns drawn with finger off trigger.  
17 And there were unintentional shootings that had occurred  
18 during scuffles where people were actually being placed under  
19 apprehension or for whatever reason, and as they were  
20 grabbing with one hand, they would also grab the other, which  
21 would cause the weapon to fire. And at this point, I know  
22 that I believe Dallas Police Department trains finger off  
23 trigger so when they draw the weapon, they don't place their  
24 finger on the trigger until they intend to fire the weapon.  
25 That prevents the sympathetic discharge like -- like you were

1 describing, I think.

2 Q. Okay. So -- so as far as you know in your  
3 information, this was such a situation that police agencies  
4 had to train their officers to do something different to keep  
5 from this sympathetic discharge or this sympathetic  
6 contraction of the muscles to cause an unintentional firing  
7 of the weapon?

8 A. That is correct.

9 MS. BALIDO: Pass the witness.

10 Further Redirect Examination

11 By Mr. Davis:

12 Q. Sir, pistols have trigger guards, don't they --

13 A. Yes, they do.

14 Q. -- as a rule? And what's the purpose of a trigger  
15 guard?

16 A. A trigger guard is just as it sounds. It's to guard  
17 the trigger, keep something from coming in contact with the  
18 trigger and causing the weapon to fire when you don't want it  
19 to.

20 Q. Such as a situation perhaps as Ms. Balido has termed  
21 "sympathetic contraction," correct?

22 A. If -- if -- for the sympathetic contraction and  
23 again I don't know if that's the exact terminology, but for  
24 what we're discussing, for that to actually produce a weapon  
25 to fire -- cause a weapon to fire, the trigger finger would

1 have to be in -- on the trigger, inside the trigger guard.

2 Q. Uh-huh. Because if it's outside, it can't make  
3 contact with the trigger, can it?

4 A. That's correct. The finger would then squeeze  
5 against the weapon trigger guard.

6 Q. So even in that occurrence, for that gun to  
7 discharge, that individual still has to have his finger on  
8 that trigger in a position to pull it back, correct?

9 A. That is correct.

10 MR. DAVIS: No further questions, Your Honor.

11 MS. BALIDO: Just a couple more questions,  
12 Judge.

13 Further Recross-Examination

14 By Ms. Balido:

15 Q. In your report you mentioned that there was a number  
16 of guns that this bullet could have been shot through.

17 A. Yes.

18 Q. Okay. How many -- is there any way of telling how  
19 many different kinds of guns?

20 A. There were -- I believe I counted about 22 or 24  
21 different manufacturers that came up out of the database.

22 Q. Okay.

23 A. There could be others.

24 Q. Okay. And since you don't have the gun itself,  
25 there's no way of knowing the amount of pressure that would

1 have to be put on the trigger before it could fire, the exact  
2 amount of pressure?

3 A. I would have no idea until I would test an  
4 individual gun.

5 MS. BALIDO: Pass the witness.

6 MR. DAVIS: Nothing further, Your Honor.

7 THE COURT: Thank you, sir. You may step  
8 down. Excused, subject to recall.

9 THE WITNESS: Thank you, sir.

10 MR. DAVIS: We call Officer Rogers.

11 (Witness brought forward.)

12 THE COURT: Good morning. Raise your right  
13 hand, please, sir.

14 (Witness sworn.)

15 THE COURT: Thank you, Officer. Have a seat  
16 to my left, if you please.

17 The State may continue.

18 MR. DAVIS: Thank you.

19 JAMES ROGERS

20 was called as a witness by the State and, after having been  
21 first duly sworn, testified as follows:

22 Direct Examination

23 By Mr. Davis:

24 Q. Sir, would you please tell us your full name?

25 A. James Stewart Rogers.

1 Q. Mr. Rogers, how are you employed?

2 A. Forensic investigator with the Garland Police  
3 Department.

4 Q. First of all, how long have you been with the Garland  
5 Police Department?

6 A. Approximately seven years.

7 Q. I believe you are a forensic investigator; is that  
8 correct?

9 A. Correct.

10 Q. How long have you been a forensic investigator?

11 A. Well, that title came to our department about two  
12 years ago. Before that we were crime scene search  
13 technicians. I also did the same job for about three years  
14 at Wichita Falls PD.

15 Q. So as I understand you've been doing this type of  
16 work for approximately five years?

17 A. Ten years.

18 Q. Ten years in all. Good.

19 Tell us first of all what are your duties and  
20 responsibilities -- what type, what type of actions do you  
21 take out there for the police department?

22 A. Well, I go to a crime scene. I photograph. I  
23 document any evidence's location. I collect any physical  
24 evidence. I process items and areas for fingerprints.  
25 Basically any kind of physical evidence.

1 Q. What type of training have you received through your  
2 present position?

3 A. I received training through the police station  
4 itself, through the FBI, through Texas D.P.S., Secret  
5 Service, several private training facilities.

6 Q. As I understood part of your duties then would be to  
7 go to a crime scene. First of all, would you document the  
8 crime scene as best you could?

9 A. Yes, sir.

10 Q. At times do you collect evidence if it's available  
11 at the crime scene?

12 A. Yes, sir, I do.

13 Q. And then would you collect other items such as  
14 fingerprints if you can find them?

15 A. Yes.

16 Q. Are there times when you might be asked to -- to run  
17 tests to detect possible blood evidence?

18 A. Yes, sir.

19 Q. And then finally are there occasions when you might  
20 go to a crime scene and actually collect blood samples in  
21 some way?

22 A. Yes, sir, there are.

23 Q. Officer Rogers, I want to direct your attention  
24 first back to Thursday, October the 5th of 2000, ask you  
25 whether at approximately 4:00 p.m. if you went to 1718

1 Barclay in Richardson, Texas?

2 A. Yes, sir, I did.

3 Q. What was the purpose of your trip to that location?

4 A. To collect any evidence that might be found.

5 Q. As part of -- as part of that, did you have an  
6 occasion to go into the bathroom area of that home?

7 A. Yes, sir, I did.

8 Q. And once inside the bathroom, did you do certain  
9 tests on any items there in the bathroom?

10 A. Yes, sir. I was asked to first perform a visual  
11 search on the bathtub area, shower area, see if I could  
12 visually detect any blood. And then after that point I was  
13 requested to use the chemical for presumptive blood tests.

14 Q. First of all, when you looked at this bathtub, could  
15 you visibly see any blood?

16 A. No, sir.

17 Q. You then made a decision or you were requested to do  
18 some testing to try to detect blood that wasn't visible; is  
19 that right?

20 A. Yes, sir.

21 Q. What particular kind of tests did you do out there?

22 A. I applied a chemical called luminal to the bathtub  
23 and shower wall.

24 Q. And when you -- when you apply luminal, if blood is  
25 going to be present there that you can't actually see, will

1 luminal react with it in some way?

2 A. Yes, sir, it causes the iron in the blood to  
3 luminesce and it appears as a pale blue glow.

4 Q. When you applied the luminal to the bathtub out  
5 there at Barclay, did you get any kind of reaction?

6 A. We got a very limited reaction on the outside edge  
7 of the bathtub.

8 Q. Which was consistent with what in your opinion and  
9 your experience?

10 A. Possible blood, or perhaps bleach.

11 Q. Bleach. There's several other elements that will  
12 react with luminal; is that right?

13 A. Yes, sir, luminal reacts with iron, so it's a fairly  
14 common substance.

15 Q. Okay. But again, one of the substances that would  
16 react to luminal would be blood; is that right?

17 A. Yes, sir.

18 MR. DAVIS: Your Honor, at this time may I  
19 approach.

20 THE COURT: You may.

21 Q. (By Mr. Davis) Officer Rogers, showing you State's  
22 Exhibit Number 75, is this a photograph of the bathtub that  
23 you took there on Barclay?

24 A. Yes, sir, it is.

25 MR. DAVIS: Your Honor, at this time we would



1 offer State's Exhibit Number 75.

2 (State's Exhibit No. 75 offered)

3 MS. BALIDO: No objection.

4 THE COURT: Admitted.

5 (State's Exhibit No. 75 admitted)

6 Q. (By Mr. Davis) Now, in the photograph, again,  
7 there's no blood visible in State's Exhibit Number 75, is  
8 there?

9 A. No, sir.

10 Q. This photograph was taken before you applied the  
11 luminal; is that right?

12 A. Yes, sir.

13 Q. While you were there at Barclay on October the 5th,  
14 did you collect any empty gin bottles?

15 A. No, sir, I don't believe I did.

16 Q. Did you collect any empty Tequila bottles?

17 A. No, sir.

18 Q. How about any empty champagne bottles?

19 A. No, sir.

20 Q. Was any member of the household there while you were  
21 doing this collection and search?

22 A. The woman who resided there was.

23 Q. Do you remember her name?

24 A. No, sir. I believe she was a relative --

25 Q. Okay.

1 A. -- of the defendant.

2 Q. All right. At any time did that -- did that  
3 individual give you any empty bottles of Tequila, gin, or  
4 champagne?

5 A. No, sir.

6 Q. Did you observe any bottles of that nature while you  
7 were in the residence?

8 A. Not that I recall, no, sir.

9 Q. About how long did you stay at Barclay?

10 A. Oh, probably an hour, maybe an hour and a half.

11 Q. Did you -- did you on that date also go to a  
12 location at 2023 Portsmouth in Richardson, Texas?

13 A. Yes, sir.

14 Q. The purpose of your visit to that location was what?

15 A. To collect a Go-Ped and clothes of the person that  
16 lived there.

17 Q. Did you find a Go-Ped at that location?

18 A. Yes, sir.

19 Q. Did you take it?

20 A. Yes.

21 Q. Did you also take some clothing?

22 A. Yes, sir.

23 Q. Did you make any inspection of the outside portion  
24 of the house?

25 A. No.

1 Q. Not at that time?

2 A. No, sir.

3 Q. Okay. Did you do anything else at that location?

4 A. No, I photographed the Go-Ped and the clothes and  
5 collected them. That's all I did.

6 Q. Directing your attention forward now to October the  
7 6th. This will be a Friday. At some point did you have an  
8 occasion to go to Edgewood, Texas?

9 A. Yes.

10 Q. Do you remember about what time that you went there?

11 A. I believe I was called in about 3:45 in the morning.

12 Q. Uh-huh. And do you recall, did some member of the  
13 Garland Police Department ask you to go to Edgewood?

14 A. Yes, sir.

15 Q. Do you remember whether or not it was Detective  
16 Myers or someone else?

17 A. It was my supervisor. He called me at home, said  
18 that I needed to accompany him to that location.

19 Q. Do you remember the location in Edgewood that you  
20 first went to?

21 A. Not by address, no. We had to be led there by a  
22 deputy.

23 Q. Did you actually go to a house first?

24 A. Yes, sir.

25 Q. All right. Sometime later did you go to another

1 location in Edgewood?

2 A. Yeah, we went to a creek bed.

3 Q. And were other police officers already there when  
4 you got there?

5 A. Yes, sir.

6 Q. Now, what time of day or night was it when you got  
7 out there to the creek, would you estimate?

8 A. It was about 6 o'clock in the morning.

9 Q. Still dark outside?

10 A. Very much so.

11 Q. Did you have an opportunity to examine the crime  
12 scene and to inspect it?

13 A. Yes.

14 Q. At the time that you got there, did you see a body  
15 lying in the creek?

16 A. Yes, sir, I did.

17 Q. So the body had not yet been removed; is that right?

18 A. That is correct.

19 Q. What's the first thing that you did then when you  
20 got to the crime scene there at the creek?

21 A. Well, the first thing I did, I talked to the  
22 officers that were already there to see if they had seen  
23 anything I did not see. Then I basically searched the area  
24 with flashlights because it was -- like I said, it was very  
25 dark.

1 Q. And --

2 A. Go ahead.

3 Q. At a certain point did you take photographs to  
4 document the crime scene?

5 A. Yes, sir, I did.

6 MR. DAVIS: May I approach, Your Honor.

7 THE COURT: You may.

8 Q. (By Mr. Davis) Officer Rogers, showing you now  
9 State's Exhibits 31, 32, 33, and 34. Are these photographs  
10 that you took out there in Edgewood on October the 6th of the  
11 year 2000?

12 A. Yes, sir, they are.

13 Q. Do they truly and accurately depict the crime scene  
14 as you found it?

15 A. Yes, sir.

16 MR. DAVIS: Your Honor at this time we will  
17 offer State's Exhibit 31, 32, 33, and 34.

18 (State's Exhibit No. 31 through 34 offered)

19 MR. BYCK: Your Honor, may I have permission  
20 to take the witness on voir dire very briefly?

21 THE COURT: You may.

22 Voir Dire Examination

23 By Mr. Byck:

24 Q. Sir, you took all these photographs?

25 A. Yes.

1 Q. Let me show you 33 and 34. Has the body been moved  
2 or changed in position in any way between 33 and 34?

3 A. Not -- no, other than just the wind or the water  
4 motion.

5 Q. But it's in exactly the same position. Nobody went  
6 into the water, changed it, raised an arm, moved it around or  
7 anything while you were there? No?

8 A. No.

9 MR. BYCK: Okay. No objection to State's 31  
10 through 34, inclusive.

11 THE COURT: They are all admitted.

12 (State's Exhibit No. 31 through 34 admitted)

13 MR. DAVIS: Permission to publish, Your Honor.

14 THE COURT: You may.

15 Q. (By Mr. Davis) State's Exhibit Number 31, first of  
16 all, Officer Rogers, what area of that -- of that crime scene  
17 are we looking at?

18 A. That is directly above the culvert area, that large  
19 drain pipe.

20 Q. State's Exhibit Number 30 which has previously been  
21 admitted, would this also show from basically across the  
22 creek the same tree and the culvert area that we see in  
23 State's Exhibit Number 31?

24 A. Yes, sir.

25 Q. To kind of orient the jury, again, State's Exhibit

1 31 is still taken while it was dark out there, right?

2 A. (No response.)

3 (Exhibit published to jury.)

4 Q. (By Mr. Davis) State's Exhibit Number 32, does this  
5 show in greater detail the boulder or the large rock that's  
6 shown in State's Exhibit 31?

7 A. Yes, sir.

8 Q. First of all, as we start -- as we start looking at  
9 this rock, is there any object on this rock that caught your  
10 attention in particular?

11 A. Yes, sir, there's a section of hair caught on the  
12 rock here.

13 Q. Basically in the middle portion of the rock there?  
14 Did you actually collect that hair for further analysis later  
15 on?

16 A. Yes, sir.

17 Q. Now, State's Exhibit Number 33, this photograph,  
18 would it be fair to say is now taken from the other side of  
19 the creek looking across the creek toward the culvert and the  
20 rocks that we've just been looking at?

21 A. Yes, sir.

22 Q. The body that's depicted in State's Exhibit Number  
23 33, would it be fair to say that this body is down low in the  
24 same area as the culvert and the rock?

25 A. Yes, sir, it's almost directly beneath.

1 (Exhibit published to jury.)

2 Q. (By Mr. Davis) The body is still in the water then;  
3 is that what we're seeing?

4 A. Yes, sir.

5 Q. Could you tell whether a portion of the face was  
6 actually underwater when you first saw the body?

7 A. Yes, sir, it was.

8 Q. While you were out there, Officer Rogers, did you  
9 see any signs of aquatic action, in particular any turtles or  
10 any other --

11 A. Yes, sir, there was a large snapping turtle at the  
12 position of the body.

13 Q. Finally, State's Exhibit Number 34, is this a closer  
14 view of the body that shows that portion of the body that's  
15 actually under the water?

16 A. Yes, sir.

17 Q. How close to the body was this snapping turtle?

18 A. It was -- it appeared to me to be taking a bite out  
19 of her arm when I saw it so --

20 Q. How large a turtle are we talking about?

21 A. Across the shell was probably at least a foot and a  
22 half.

23 Q. How long did you -- did you stay at that particular  
24 location at the creek?

25 A. Probably two, two and a half hours.



1 Q. When you -- when you left that particular crime  
2 scene, did you go back to the Garland Police Department?

3 A. Yes, sir.

4 Q. And at that point were you asked to process a  
5 vehicle for possible physical evidence?

6 A. Yes, sir.

7 Q. And in the process of that examination, did you take  
8 photographs of the automobile?

9 A. Yes, sir, I did.

10 MR. DAVIS: May I approach, Your Honor.

11 THE COURT: You may.

12 Q. (By Mr. Davis) First, Officer Rogers, the  
13 automobile that you were asked to process there on October  
14 the 6th, is it shown in State's Exhibit Number 7, the  
15 four-door silver Honda Accord?

16 A. Yes, sir, it is.

17 Q. Looking at photographs that are marked now State's  
18 Exhibit 77, 78, 79, 80, 81, 82, 83, and 84, are these  
19 photographs that you took of the Honda as you processed it on  
20 October the 6th, the year 2000?

21 A. Yes, sir.

22 MR. DAVIS: Your Honor, at this time we will  
23 offer State's Exhibits 77 through 84.

24 (State's Exhibit No. 77 through 84 offered)

25 MS. BALIDO: No objection.

1 THE COURT: Admitted.

2 (State's Exhibit No. 77 through 84 admitted)

3 Q. (By Mr. Davis) First of all, looking at State's  
4 Exhibit Number 77, the first photographs that we'll look at,  
5 would it be fair to say that they show the trunk area of that  
6 automobile?

7 A. Yes, sir.

8 Q. And is there any particular items that are shown  
9 there in State's Exhibit Number 77, any blood evidence, other  
10 physical evidence that you later collected for analysis?

11 A. Yes, sir, in between these two bolts what we  
12 believed to be blood.

13 Q. This is with the trunk lid up; is that right?

14 A. Yes, sir.

15 Q. The trunk itself, did it have several items inside  
16 still?

17 A. Yes, sir, it did.

18 Q. State's Exhibit Number 78, would this further show  
19 a -- a portion of the trunk seal or the rim area of that  
20 trunk?

21 A. Yes, sir.

22 Q. And do we also see evidence of blood there?

23 A. Yes.

24 (Exhibit published to jury.)

25 Q. (By Mr. Davis) And again, the blood that you

1 observed here on the trunk lid, did you collect that and  
2 later submit that to the Texas Department of Public Safety  
3 lab for analysis?

4 A. Yes, sir.

5 Q. State's Exhibit Number 79, does this show the trunk  
6 as it was when you first opened the lid?

7 A. Yes.

8 Q. Some of the items that the jury can see here, what  
9 would they be? Is there any clothing in there, for instance?

10 A. Yes, sir, there's several items of clothing, bags  
11 from stores, considerable amount of blood.

12 Q. And as I understand, State's Exhibit Number 79 was  
13 taken before any of those items was moved; is that right?

14 A. Yes, sir.

15 Q. State's Exhibit Number 80 then, does this show the  
16 condition of the trunk once you started to move some of those  
17 items?

18 A. Yes, sir.

19 (Exhibits published to jury.)

20 Q. (By Mr. Davis) Once you had moved some of the  
21 items, did blood become apparent to you?

22 A. Yes, sir.

23 Q. I want to now show you some of the photographs of  
24 the interior portion of that automobile. First of all,  
25 State's Exhibit Number 81, would this be the back floorboard

1 area? Specifically, would this be the -- behind the driver's  
2 side, the rear compartment?

3 A. Yes, sir.

4 Q. The item that I'm now pointing to, Officer Rogers,  
5 what's shown in that photograph?

6 A. It's a bottle of Hennessy whiskey.

7 Q. Was there still whiskey or liquid in that bottle?

8 A. Yes, sir.

9 Q. Officer Rogers, do you recall whether there were any  
10 other whiskey bottles or containers for alcoholic beverages  
11 inside the vehicle?

12 A. Yes, sir, I believe there were a few beer cans as  
13 well.

14 Q. State's Exhibit 82, does this show the front two  
15 seats of the Honda?

16 A. Yes, sir.

17 Q. The item that's contained there on the console, what  
18 are we looking at?

19 A. It's a cigarette package.

20 Q. State's Exhibit Number 83, does that show in greater  
21 detail the cigarette pack that's in the console area?

22 A. Yes, sir.

23 Q. Did you collect that for later analysis?

24 A. Yes, sir, I did.

25 Q. Looking now at State's Exhibit Number 84, what

1 portion of the automobile does this photograph show?

2 A. That's the car door area on the front driver's door.

3 Q. All right. So on the driver's side door was there a  
4 cargo holder or some area where you could place items?

5 A. Yes, sir.

6 Q. The items that we're seeing here in general what  
7 were those items that were contained in that particular  
8 holder?

9 A. It's a checkbook register.

10 Q. Again, that's on the driver's side?

11 A. Yes, sir.

12 Q. Okay. Officer Rogers, I want to now talk to you for  
13 a while about some of the items that you recovered and  
14 collected in the automobile from the trunk area if we could  
15 begin there. First of all, did you collect a tan-colored  
16 purse from the trunk area?

17 A. Yes, sir.

18 Q. Sir, if you would, if you'd look at State's Exhibit  
19 Number 83, does this appear to be the tan-colored purse that  
20 you retrieved from the trunk of that automobile?

21 A. Yes, sir.

22 Q. Is that -- what's this purse made out of? How --

23 A. I'd say a woven nylon.

24 Q. Were there still some items in this purse when you  
25 recovered it?

1           A.     Yes.

2                   MR. DAVIS: Your Honor, at this time we will  
3 offer State's Exhibit Number 83 with the contents thereof.

4                   MS. MILLER: 83 is already a photo --

5                   MR. BYCK: 83 is a photograph.

6                   MR. DAVIS: Okay. This would be 83A.

7                   (State's Exhibit No. 83A offered)

8                   MS. BALIDO: Judge, if I could see it just for  
9 a moment.

10                  MR. BYCK: We have no objection to 83A.

11                  MR. DAVIS: Make it 83A.

12                  THE COURT: Admitted.

13                  (State's Exhibit No. 83A admitted)

14                  MR. DAVIS: May I approach, Your Honor.

15                  THE COURT: You may.

16           Q.     (By Mr. Davis) Let me show you now what's been  
17 marked as State's Exhibit Number 86. Do you recognize this  
18 brown leather billfold?

19           A.     Yes, sir.

20           Q.     Was this actually contained in State's Exhibit  
21 Number 83A at the time that you recovered it?

22           A.     Yes, sir.

23                   MR. DAVIS: Your Honor, at this time we will  
24 offer State's Exhibit Number 86.

25                   (State's Exhibit No. 86 offered)

1 MR. BYCK: Briefly on voir dire, Your Honor.

2 THE COURT: Granted.

3 Voir Dire Examination

4 By Mr. Byck:

5 Q. Sir, let me show you State's Exhibit 86, and I want  
6 you to look at these items contained therein. Were these  
7 items in State's 86 when you recovered it from State's 83A?

8 A. I believe so, sir.

9 MR. BYCK: No further questions. No objection  
10 to 86.

11 THE COURT: Admitted.

12 (State's Exhibit No. 86 admitted)

13 Q. (By Mr. Davis) Now, State's Exhibit Number 83A, the  
14 purse, first of all, I believe you testified that there were  
15 several -- several items inside that purse at the time it was  
16 recovered, correct?

17 A. Yes, sir.

18 Q. Sir, do we see several different cards, one being a  
19 Foley's credit card, for instance, in the name of Bertie L.  
20 Cunningham inside of that purse?

21 A. Yes, sir.

22 Q. Do we see a health insurance card with the name of  
23 Bertie L. Cunningham?

24 A. Yes, sir.

25 Q. Okay. Is there a another card, appears to be an ATM

1 card for Washington Mutual under the name of Bertie L.  
2 Cunningham, correct?

3 A. Yes, sir.

4 Q. Be fair to say that there are several other personal  
5 items, including glasses, pieces of paper, and other cosmetic  
6 items inside the purse?

7 A. Yes, sir.

8 Q. State's Exhibit Number 86, the leather billfold,  
9 again, does it contain a card, handwritten card inside with  
10 the name of Bertie Cunningham, 2749 Laurel Oaks, Garland,  
11 Texas, with the zip, with the phone number, with the notation  
12 Mary Shelton -- I'm sorry, Mary E. Shelton with the address  
13 of 3119 Big Oaks in Garland?

14 A. Yes, sir.

15 Q. Now, at the present time the billfold does not  
16 contain any money, does it?

17 A. No, sir.

18 Q. It does contain several photographs as well as cards  
19 again bearing the name of, in one instance, Orville  
20 Cunningham, and B.L. Cunningham, correct?

21 A. Yes.

22 Q. Did you remove any money from the billfold at the  
23 time that you seized it?

24 A. I don't believe so, no, sir.

25 Q. So that I'm clear, did this billfold contain any



1 money at the time that it was collected from that Honda  
2 Accord automobile on October the 6th?

3 A. No, sir.

4 Q. Did you find any loose money inside State's Exhibit  
5 Number 83A, the tan-colored purse?

6 A. No.

7 MR. DAVIS: If I can just have a continued  
8 ability to approach, Your Honor.

9 THE COURT: You may.

10 MR. DAVIS: Thank you.

11 Q. (By Mr. Davis) State's Exhibit 88 which appears to  
12 be a Texas liability insurance card, was that seized from the  
13 trunk, also?

14 A. Yes.

15 Q. As well as State's Exhibit Number 89 which appears  
16 to be an envelope bearing the name of Arapaho Baptist Church  
17 from the trunk also?

18 A. Yes.

19 Q. You need to answer out yes or no.

20 A. Oh, yes, sir.

21 MR. DAVIS: We'll offer State's Exhibits 88  
22 and 89 at this time.

23 (State's Exhibit No. 88 and 89 offered)

24 MR. BYCK: No objection, 88 and 89.

25 THE COURT: Admitted.

1 (State's Exhibit No. 88 and 89 admitted)

2 Q. (By Mr. Davis) And, again, Officer Rogers, as we  
3 look at these two exhibits, both of them bear the name of  
4 Bertie Cunningham; is that right?

5 A. Yes, sir.

6 Q. Is there still -- does there appear to be something  
7 contained in State's Exhibit Number 89?

8 A. Yes, sir, it appears that there was money. It's a  
9 church donation so I didn't take it out of there.

10 Q. Does it bear the notation of budget fund, \$110;  
11 United We Build, \$40, for a total amount enclosed \$150?

12 A. Yes, sir.

13 Q. Sir, let me show you two receipts. First receipt  
14 marked State's Exhibit 90. The second receipt marked as  
15 State's Exhibit 94. Were these two items also recovered --  
16 recovered from the trunk of the automobile?

17 A. Yes, sir.

18 MR. DAVIS: Your Honor, at this time we will  
19 offer State's Exhibit Number 90, which is a JC Penney's  
20 receipt, and State's Exhibit 94, which is a Dillard's  
21 receipt.

22 (State's Exhibit No. 90 and 94 offered)

23 MR. BYCK: No objection to 90, 94.

24 THE COURT: Both admitted.

25 (State's Exhibit No. 90 and 94 admitted)

1 Q. (By Mr. Davis) First of all, let's look at the  
2 Dillard's receipt. Does that show a date, Officer Rogers?  
3 It's faint, but does it show a date of 10-4-2000, with the  
4 time of 11:55 on it?

5 A. Yes, sir.

6 Q. Total purchase amount there is what, \$46 and --

7 A. 55 cents.

8 Q. -- and 55 cents.

9 Secondly, the JC Penney's receipt, which is State's  
10 Exhibit Number 90, sir, is that -- does that show a time of  
11 2:55 p.m.? Is that correct?

12 A. Yes, sir, it is.

13 Q. Okay. Does it show that the date again is  
14 10-4-2000?

15 A. Yes, sir.

16 Q. Does it show an amount of \$32.73?

17 A. Yes, sir, it does.

18 Q. And the item, quantity one, does it show to be a  
19 short robe?

20 A. Yes, sir.

21 Q. Does it indicate that the purchase was made with a  
22 Discover Card?

23 A. Yes, sir.

24 Q. And some of the numbers are blanked out on that,  
25 correct --

1 A. Yes.

2 Q. -- with X's?

3 Officer Rogers, if we look at the numbers that still  
4 appear on this receipt, State's Exhibit Number 90, do the  
5 numbers 7884 follow a long series of X's?

6 A. Yes, sir.

7 Q. Looking at State's Exhibit Number 4, which is a  
8 Discover Card issued to Frances Louise Connor, can you please  
9 read for the members of the jury the last four numbers that  
10 appear on that card?

11 A. 7884.

12 Q. So that the last four numbers of that credit card  
13 match the numbers showing on the JC Penney receipt; is that  
14 right?

15 A. Yes, sir.

16 THE COURT: You may continue, Counsel.

17 MR. DAVIS: Thank you.

18 Q. (By Mr. Davis) Officer Rogers, State's Exhibit  
19 Number 93 which appears to be a Dillard's bag, was that  
20 retrieved from the trunk of the automobile also?

21 A. Yes, sir.

22 MR. DAVIS: We'll offer State's Exhibit Number  
23 93 at this time.

24 (State's Exhibit No. 93 offered)

25 MR. BYCK: No objection, 93.

1 THE COURT: Admitted.

2 (State's Exhibit No. 93 admitted)

3 Q. (By Mr. Davis) State's Exhibit 90, which appears to  
4 be a JC Penney's bag, was that recovered from the trunk  
5 also?

6 A. Yes.

7 Q. Inside --

8 MS. MILLER: Greg, you also have a 90. It  
9 needs to be 91.

10 MR. DAVIS: Okay. That will be Exhibit 91.  
11 Okay.

12 Q. (By Mr. Davis) I understood you to say State's  
13 Exhibit 91 was recovered from the trunk; is that correct?

14 A. Yes, sir.

15 Q. State's Exhibit 91A, which appears to be a blue  
16 robe, was that also retrieved from the trunk?

17 A. Yes.

18 MR. DAVIS: Your Honor, at this time we will  
19 offer State's Exhibit 91 and 91A.

20 (State's Exhibit No. 91 and 91A offered)

21 MR. BYCK: No objection to 91 and 91A.

22 THE COURT: Both admitted.

23 (State's Exhibit No. 91 and 91A admitted)

24 Q. (By Mr. Davis) Let me now show you what has been  
25 marked as Exhibit 91B, Officer Rogers. Does that appear to

1 be also a JC Penney's bag?

2 A. Yes, sir.

3 Q. What's -- what's the condition of this bag?

4 A. The bag is covered with dried blood, and it's ripped  
5 and torn.

6 MR. DAVIS: Your Honor, at this time we will  
7 offer State's Exhibit 91B.

8 (State's Exhibit No. 91B offered)

9 MR. BYCK: No objection.

10 THE COURT: Admitted.

11 (State's Exhibit No. 91B admitted)

12 Q. (By Mr. Davis) As I understand it, whenever you  
13 retrieved State's Exhibit 91B, was it soaked in blood?

14 A. Yes, sir.

15 Q. Officer Rogers, I want to show you a white T-shirt.  
16 It's been marked as State's Exhibit 91C. Do you recognize  
17 that as a white T-shirt that you recovered from the trunk of  
18 that automobile, also?

19 A. Yes, sir.

20 Q. Now, there's a lot of writing with blue pen on the  
21 T-shirt at this time. Was that writing -- was that present  
22 on the T-shirt at the time that you collected it, or has that  
23 been placed on the T-shirt later?

24 A. That was placed on it later.

25 Q. Specifically, did you submit this T-shirt to the

1 Texas Department of Public Safety lab for further analysis  
2 for blood and/or DNA work?

3 A. Yes.

4 Q. Do you assume that that's writing that the lab  
5 personnel actually placed on the T-shirt?

6 A. I believe that.

7 MR. DAVIS: Your Honor, at this time we will  
8 offer State's Exhibit 91C.

9 (State's Exhibit No. 91C offered)

10 MR. BYCK: No objection to 91C.

11 THE COURT: Admitted.

12 (State's Exhibit No. 91C admitted)

13 Q. (By Mr. Davis) The T-shirt itself appears to be  
14 what, a Fruit of the Loom -- what's the size of that T-shirt?

15 A. A large, 46-48.

16 Q. Certain areas of that T-shirt have also been cut  
17 out. Do you assume that was done by the lab as they  
18 collected possible blood samples?

19 A. Yes, sir.

20 Q. Okay. Now, I want to turn your attention to the  
21 items that you recovered from inside the vehicle.

22 A. Okay.

23 Q. First of all, as I understood, you actually  
24 collected the cigarette packs that were inside the vehicle,  
25 didn't you?

1           A.    Yes, sir.

2                   THE COURT:   Before we continue, may I see the  
3 attorneys at the side of the bench, scheduling matter.

4                   Ladies and gentlemen, we will continue with the  
5 presentation of the testimony of this witness later.  We'll  
6 take our lunch break, hour for your lunch.

7                   THE COURT:   All rise.

8                   Counsel, let's return 1:15.

9                   (Recess taken.)

10                   THE COURT:   Before we -- on the record,  
11 Darline.

12                   Before we continue the hearing with regard to the  
13 search of the jail cell, let me invite both sides to avail  
14 themselves of the benefits of United States Supreme Court  
15 case Hudson v. Palmer, found at 468 U.S. 517, also found at  
16 104 Supreme Court 3194, 82 Lawyers Edition 2d 393.

17                   MS. LITTLE:   What was the page number, Judge,  
18 on that --

19                   MS. BALIDO:   I've got it.

20                   MS. LITTLE:   -- court cite?

21                   MS. BALIDO:   I've got it.

22                   THE COURT:   468 U.S. 517.  Case basically  
23 holds a prisoner has no reasonable expectation of privacy in  
24 a jail cell.  Therefore, no Fourth Amendment protection.  
25 Opinion by then Chief Justice Warren Berger.



1 Sheriff, may we have the jury, please.

2 THE BAILIFF: Yes, sir. All rise.

3 THE COURT: Let the record reflect the jury is  
4 returning to the courtroom at this time.

5 (Jury returned to courtroom.)

6 THE COURT: Jurors may be seated.

7 Mr. Murphy, you may be seated.

8 The witness may be seated.

9 Ms. King, may I ask for the benefit of counsel and  
10 the jurors and the witness, the last question to be read  
11 back.

12 (Discussion off the record.)

13 Q. (By Mr. Davis) Officer Rogers, I had just asked you  
14 about the pack of cigarettes that you found in the Honda.

15 MR. DAVIS: May I approach, Your Honor.

16 THE COURT: You may.

17 Q. (By Mr. Davis) State's Exhibits 121 and 122, are  
18 these packages of cigarettes, Basic cigarettes that you  
19 recovered from inside the Honda?

20 A. Yes.

21 Q. In addition to the two packs of cigarettes, did you  
22 also recover a receipt from that area?

23 A. Yes, sir.

24 Q. State's Exhibit Number 99, do you recognize that to  
25 be the receipt that you recovered from inside the console?

1 A. Yes, sir, I did.

2 MR. DAVIS: Your Honor, at this time we will  
3 offer State's Exhibits 99, 121, and 122.

4 (State's Exhibit No. 99, 121 and 122 offered)

5 MR. BYCK: No objection to 99, 121, and 122.

6 THE COURT: All admitted.

7 (State's Exhibit No. 99, 121, and 122 admitted)

8 Q. (By Mr. Davis) Now, the receipt, State's Exhibit  
9 99, is there an address, first of all, of 9620 Harry Hines,  
10 Dallas, Texas?

11 A. Yes, sir.

12 Q. Is there also a date of 10-4 2000, a time of 11:31  
13 p.m.; is that correct?

14 A. That is correct, yes, sir.

15 Q. Underneath the date and the time, are there a number  
16 of X's followed by four numbers 7147?

17 A. Yes, sir.

18 Q. Looking at State's Exhibit Number 5 which is a  
19 Discover Card issued to Bertie Cunningham, the last four  
20 numbers, do they match 7147?

21 A. Yes, sir.

22 Q. Is there a notation there that the transaction  
23 selected cannot be processed?

24 A. Yes, sir.

25 Q. Now, I want to refer you to the checkbook that you

1 found in the cargo holder on the driver's side. Do you  
2 recall that?

3 A. Yes, sir.

4 Q. State's Exhibits 101 and 102, do you recognize 101  
5 to be the checkbook cover that you recovered from that  
6 location and State's Exhibit 102 to be a check registry that  
7 you recovered?

8 A. Yes, sir.

9 MR. DAVIS: At this time we will offer State's  
10 Exhibits 101 and 102.

11 (State's Exhibit No. 101 and 102 offered)

12 MR. BYCK: No objection to 101, 102.

13 THE COURT: Both admitted.

14 (State's Exhibit No. 101 and 102 admitted)

15 Q. (By Mr. Davis) In State's Exhibit 102, are there  
16 several entries?

17 A. Yes, sir.

18 Q. And also I notice that there's a certain pinkish or  
19 purplish color to certain documents such as State's Exhibit  
20 99, and the registry, State's Exhibit 102. Can you tell the  
21 members of the jury how that particular color has been  
22 produced on these documents?

23 A. Yes, sir, that coloration is from a chemical  
24 compound called anhydron. It reacts with amino acids and  
25 sweat and that's how we develop latent fingerprints on

1 papers.

2 Q. So when you recovered the documents, they didn't  
3 have that color, but after you processed them for  
4 fingerprints, that's how they got this color, right?

5 A. Yes, sir.

6 Q. State's Exhibit 103, do you recognize this to be  
7 some sort of receipt from the Citizens National Bank of Wills  
8 Point, Texas, and Grand Saline, Texas?

9 A. Yes, sir.

10 Q. Was that inside State's Exhibit 101 when you  
11 recovered it?

12 A. Yes, sir.

13 MR. DAVIS: At this time we will offer State's  
14 Exhibit 103.

15 (State's Exhibit No. 103 offered)

16 MR. BYCK: No objection to 103.

17 THE COURT: Admitted.

18 (State's Exhibit No. 103 admitted)

19 Q. (By Mr. Davis) Now, on the face of State's Exhibit  
20 103 do we have some sort of receipt that indicates that a  
21 deposit in the amount of \$153.88 has been made?

22 A. Yes, sir.

23 Q. On the back is there some handwriting with the name  
24 of Kirsten Adames, A-d-a-m-e-s, as well as a telephone number  
25 of 800-777-2249, extension 8577?

1 A. Yes, sir.

2 Q. Looking now at State's Exhibit 104, is that a  
3 drivers license that you recovered from the checkbook cover  
4 101?

5 A. Yes, sir.

6 MR. DAVIS: We'll offer State's Exhibit 104,  
7 the defendant's -- it's in the name of Jedidiah Isaac Murphy.

8 (State's Exhibit No. 104 offered)

9 MR. BYCK: Is that an I.D. card or a Texas  
10 drivers license?

11 MR. DAVIS: It's an identification card.

12 MR. BYCK: No objection, 104.

13 THE COURT: Admitted.

14 (State's Exhibit No. 104 admitted)

15 Q. (By Mr. Davis) State's Exhibit 105, which appears  
16 to be a card from the Wizards Sports Cafe in Richardson,  
17 Texas, did you also recover that from the Honda automobile?

18 A. Yes, sir.

19 MR. DAVIS: We'll offer State's Exhibit 105.

20 (State's Exhibit No. 105 offered)

21 MR. BYCK: No objection to 105.

22 THE COURT: Admitted.

23 (State's Exhibit No. 105 admitted)

24 Q. (By Mr. Davis) State's Exhibit 110, which is a  
25 business card purporting to be that of Shelley D. Featherston

1 who is a Constable in Kaufman County, did you also recover  
2 State's Exhibit 110 from the Honda automobile?

3 A. Yes.

4 MR. DAVIS: We will offer State's Exhibit 110  
5 at this time.

6 (State's Exhibit No. 110 offered)

7 MR. BYCK: No objection to 110.

8 THE COURT: Admitted.

9 (State's Exhibit No. 110 admitted)

10 Q. (By Mr. Davis) Now, first of all, on the card,  
11 State's Exhibit 105, which is the Wizards Sports Cafe at 747  
12 South Central Expressway in Richardson, Texas, is there a  
13 signature there for the member?

14 A. Yes, sir.

15 Q. Can you make out that signature?

16 A. Jedidiah Murphy.

17 Q. And does it also have date stamp? Looks like  
18 September --

19 A. September 2001.

20 Q. Again, the color on this card would have been due to  
21 the processing that you did for fingerprints; is that right?

22 A. Yes, sir.

23 Q. The driver's -- or the identification card bearing  
24 the name of Jedidiah Isaac Murphy, again, was that -- was  
25 that included in the papers inside State's Exhibit 101?

1 A. Yes, sir.

2 Q. And does that relate date of birth 9-1-75, that it  
3 expires on 9-1-06?

4 A. Yes, sir.

5 (Exhibit published to jury.)

6 Q. (By Mr. Davis) Additionally, did you recover  
7 several pieces of paper that you later processed for  
8 fingerprints?

9 A. Yes, sir.

10 Q. Starting with State's Exhibit 109, is that a square  
11 piece of paper that has the name Dr. Lee and what appears to  
12 be a telephone number of 551-6957 on it?

13 A. Yes.

14 Q. Again, that was in the checkbook; is that correct?

15 A. Yes.

16 MR. DAVIS: We'll offer State's Exhibit 109 at  
17 this time.

18 (State's Exhibit No. 109 offered)

19 MR. BYCK: No objection to 109.

20 THE COURT: Admitted.

21 (State's Exhibit No. 109 admitted)

22 Q. (By Mr. Davis) State's Exhibit 112, which appears  
23 to be a rectangular yellow piece of paper, was that recovered  
24 inside the Honda also?

25 A. Yes.

1 MR. DAVIS: We'll offer State's Exhibit 112 at  
2 this time.

3 (State's Exhibit No. 112 offered)

4 MR. BYCK: No objection to 112.

5 THE COURT: Admitted.

6 (State's Exhibit No. 112 admitted)

7 Q. (By Mr. Davis) State's Exhibit 113, which appears  
8 to be another rectangular shaped piece of yellow paper, was  
9 that recovered from the Honda?

10 A. Yes.

11 MR. DAVIS: We'll offer State's Exhibit 113.

12 (State's Exhibit No. 113 offered)

13 MR. BYCK: No objection. 113.

14 THE COURT: Admitted.

15 (State's Exhibit No. 113 admitted)

16 Q. (By Mr. Davis) State's Exhibits 114A and 114B,  
17 which would appear to be some sort of purchase or receipt for  
18 a money order on both of these, again, both these were  
19 recovered from the Honda; is that correct?

20 A. Yes, sir.

21 MR. DAVIS: We'll offer State's Exhibits 114A  
22 and 114B.

23 (State's Exhibit No. 114A and 114B offered)

24 MR. BYCK: No objection, 114A or B.

25 THE COURT: Both admitted.



1 (State's Exhibit No. 114A and 114B admitted)

2 Q. (By Mr. Davis) State's Exhibit 111, which appears  
3 to be a yellow piece of paper with the words Lynk Systems,  
4 Inc., of Atlanta, Georgia, did you recover that document from  
5 inside the Honda?

6 A. Yes, sir.

7 MR. DAVIS: We'll offer State's Exhibit 111 at  
8 this time.

9 (State's Exhibit No. 111 offered)

10 MR. BYCK: No objection, 111.

11 THE COURT: Admitted.

12 (State's Exhibit No. 111 admitted)

13 Q. (By Mr. Davis) State's Exhibit 106, which is a  
14 yellow piece of paper which appears to be a receipt from  
15 Cowboys Quick in Terrell, Texas, did you recover that  
16 document from inside the Honda?

17 A. Yes, sir.

18 MR. DAVIS: We'll offer State's Exhibit 106.

19 (State's Exhibit No. 106 offered)

20 MR. BYCK: No objection, 106.

21 THE COURT: Admitted.

22 (State's Exhibit No. 106 admitted)

23 Q. (By Mr. Davis) On State's Exhibit 106, Officer  
24 Rogers, does that appear 10-5-2000?

25 A. Yes, sir.

1 Q. Does there -- a time appear of 6:18 p.m.?

2 A. Yes, sir.

3 Q. Is it in the amount of \$22.29?

4 A. Yes, it is.

5 Q. And does a signature appear there, sir?

6 A. Yes, sir.

7 Q. Officer Rogers, if you would, looking now at State's  
8 Exhibit 53, which is a white copy of a receipt from Cowboys  
9 Quick, which has previously been admitted into evidence, does  
10 it appear that the contents of those two documents are  
11 identical?

12 A. Yes, sir.

13 Q. So that it would appear that State's Exhibit 106 is  
14 simply a carbon copy of the exhibit -- State's Exhibit 53; is  
15 that correct?

16 A. Yes, sir, that's correct.

17 Q. Finally, a series of documents here that have been  
18 marked State's Exhibits 107A, through 107E, do you recognize  
19 these five documents as having been recovered from inside the  
20 Honda, also?

21 A. Yes, sir.

22 MR. DAVIS: We'll offer State's Exhibits 107A  
23 through 107E at this time.

24 (State's Exhibit No. 107A through 107E offered)

25 MS. BALIDO: If we can just see them, Judge.

1 MR. DAVIS: These are the workers compensation  
2 receipts.

3 MR. BYCK: No objection, 107A through E,  
4 inclusive.

5 THE COURT: Admitted.

6 (State's Exhibit No. 107A through 107E admitted)

7 Q. (By Mr. Davis) Looking at State's Exhibit 107A,  
8 does this state that this is a workers compensation indemnity  
9 partial payment?

10 A. Yes, sir.

11 Q. Does it state a loss date of June 22nd of the year  
12 2000?

13 A. Yes, sir.

14 Q. Does it bear the name of Jedidiah Isaac Murphy?

15 A. It does.

16 Q. Does it bear the address of 727 East Northeast  
17 Commerce Street, Number 4, Wills Point, Texas?

18 A. 727 East North Commerce Street, yes, sir.

19 Q. And does it have an adjuster's number of 9W2?

20 A. Yes, it does.

21 Q. Does it have besides -- beside "Notes," the notation  
22 7-2 through 7-8-2000?

23 A. Yes, sir.

24 Q. State's Exhibit 107B, is that the same contents  
25 except with the note that it's 7-23 through 7-29-2000?

1 A. Yes, sir.

2 Q. 107C, again, is that similar, except for the  
3 notation 9-5 through 9-11-2000?

4 A. It is.

5 Q. 107D. Well, let me take you first of all to 107E,  
6 that notation being 9-12 through 9-18 of 2000; is that right?

7 A. Correct.

8 Q. And finally, looking at 107D, the notation 9-26  
9 through 2 -- through 10-2-2000, correct?

10 A. Correct.

11 Q. All right. First of all, now, as I understand any  
12 sort of blood evidence that may have been developed was sent  
13 to the Texas Department of Public Safety lab for later  
14 testing; is that correct?

15 A. Yes, sir.

16 Q. Now, did you process these items that we've just  
17 talked about for possible fingerprint evidence?

18 A. They were processed in our lab, yes, sir.

19 Q. Was the automobile itself processed for  
20 fingerprints?

21 A. Yes, sir, it was.

22 Q. Did you use the same method of the anhydron  
23 solution, or did you use another method to actually  
24 fingerprint the automobile?

25 A. The automobile exterior was processed with black

1 magnetic powders.

2 Q. How does that process work? If you were to find --  
3 first of all, let's go back. Were you looking for latent  
4 fingerprints?

5 A. Yes, sir.

6 Q. And when we use that term, what does that term mean  
7 to you?

8 A. Latent simply means it's not visible to the eye or  
9 it's hidden.

10 Q. How are latent fingerprints actually created?

11 A. When your hand touches the surface, the oil or  
12 residue that you get from your skin or your hair, whenever  
13 you touch it, transfers from your finger to whatever surface  
14 you are touching.

15 Q. Are latent fingerprints always created when an  
16 individual's finger touches another surface?

17 A. There is always something left behind. It might not  
18 be a readable print, but there's something left behind, yes,  
19 sir.

20 Q. What is a readable print or a comparable print?

21 A. A comparable print is a fingerprint that -- if you  
22 look at the bottoms of your fingers, you see lines on there.  
23 Where those lines start and stop or split are called  
24 identification points, and that's what you make a comparison  
25 of. So if you have a given number of those, then it's a

1 comparable print.

2 Q. Now, when you processed the Honda itself, were you  
3 able to develop any comparable latent fingerprints?

4 A. Yes, sir.

5 Q. From different -- different locations of the  
6 automobile?

7 A. Yes, sir.

8 Q. And when you found one of those fingerprints, then  
9 how actually would you preserve the fingerprint?

10 A. Okay. Once the powder is applied and you identify a  
11 fingerprint on the surface, then you apply a clear tape to it  
12 and peel it off and apply the tape to a white card.

13 MR. DAVIS: May I approach, Your Honor.

14 THE COURT: You may.

15 Q. (By Mr. Davis) Officer Rogers, I'm now showing you  
16 Exhibits 115, 116, 117, and 118. Do you recognize these four  
17 documents?

18 A. Yes, sir, I do.

19 Q. What are they?

20 A. They're the white cards that I lifted fingerprints  
21 with tape and placed the tape on the cards.

22 Q. These are fingerprints that you actually lifted from  
23 the Honda Accord; is that right?

24 A. Yes, sir.

25 MR. DAVIS: Your Honor, at this time we will

1 offer State's Exhibits 115, 116, 117, and 118, and I'm now  
2 tendering them to counsel for their inspection.

3 (State's Exhibit No. 115 through 118 offered)

4 MR. BYCK: No objection, 115 through 118.

5 THE COURT: Admit them.

6 (State's Exhibit No. 115 through 118 admitted)

7 Q. (By Mr. Davis) In addition, did you lift any  
8 fingerprints from either of the two packs of cigarettes that  
9 are there before you?

10 A. Yes, sir.

11 Q. State's Exhibit 119, Officer Rogers, do you  
12 recognize that, sir?

13 A. Yes, sir, that is a fingerprint that was lifted from  
14 the -- I believe it's 122, the unopened package.

15 MR. DAVIS: Your Honor, at this time we will  
16 offer State's Exhibit 119, and I'm again tendering that to  
17 counsel for their inspection.

18 (State's Exhibit No. 119 offered)

19 MR. BYCK: No objection to 119.

20 THE COURT: Admitted.

21 (State's Exhibit No. 119 admitted)

22 Q. (By Mr. Davis) If we could, Officer Rogers, go  
23 through these four cards from the Honda briefly. State's  
24 Exhibit Number 115, where was this particular fingerprint  
25 lifted from?

1 A. That was lifted from the driver's side of the front  
2 hood.

3 Q. Driver's side, front hood?

4 A. Yes, sir.

5 Q. Okay. State's Exhibit 116, where was this  
6 fingerprint lifted from?

7 A. This was lifted from the interior upper edge of the  
8 rear passenger door window.

9 Q. So that actually is inside the vehicle itself?

10 A. Yes, sir.

11 Q. State's Exhibit 117, can you tell the members of the  
12 jury where that fingerprint was lifted from?

13 A. This came from the exterior driver's door frame.

14 Q. Finally, State's Exhibit 118, where was this  
15 fingerprint lifted from?

16 A. This was lifted from the interior door handle of the  
17 front driver's door.

18 Q. And again, State's Exhibit 119 would have been  
19 lifted from State's Exhibit 122 which is the unopened pack of  
20 Basic cigarettes; is that right?

21 A. That's correct.

22 Q. In addition to those particular fingerprints, which  
23 I take it were they lifted with black powder?

24 A. Yes, sir.

25 Q. When you analyzed the other items with a different



1 method, were you able to develop any comparable latent  
2 fingerprints there?

3 A. Yes, sir.

4 Q. First of all, I want to direct your attention to the  
5 piece of paper that bears the name Dr. Lee, and that's going  
6 to be State's Exhibit 109.

7 A. Yes, sir.

8 Q. Okay. Were you able to lift any comparable latent  
9 fingerprints from that item?

10 A. We enhanced them on the item. They were not lifted,  
11 though.

12 Q. You were able to develop them, then?

13 A. Yes, sir.

14 Q. Were they comparable?

15 A. Yes, sir.

16 Q. I want to direct your attention to the yellow piece  
17 of paper bearing the name Lynk Systems paper, and that's  
18 going to be State's Exhibit 111. Were you able to develop  
19 latent comparable fingerprints there?

20 A. Yes, sir.

21 Q. On the item that's going to be State's Exhibit 112,  
22 which is one of the rectangular pieces of yellow paper --

23 A. Yes, sir.

24 Q. -- actually both of them, State's Exhibit 112 and  
25 113, were you able to develop comparable latent fingerprints?

1 A. Yes, sir.

2 Q. From the workers compensation receipts or check  
3 stubs there, before -- were you able to lift or develop  
4 comparable fingerprints, and this will be the 107 series  
5 there in front of you?

6 A. Yes, sir.

7 Q. The sports card or the card -- membership card,  
8 State's Exhibit 105 from Wizards Sports Cafe, bearing the  
9 name of Jedidiah Murphy, were you able to develop  
10 fingerprints there?

11 A. Yes, sir.

12 Q. From the business card belonging to Constable  
13 Shelley D. Featherston, that's going to be State's Exhibit  
14 110, were you able to develop comparable latent fingerprints  
15 there?

16 A. Yes, sir.

17 Q. Finally, on State's Exhibit Number 99, which will be  
18 the receipt from 9620 Harry Hines in Dallas --

19 A. Yes, sir.

20 Q. -- were you able to develop fingerprints there?

21 A. Yes, I did.

22 Q. In addition to that, were you able to develop  
23 fingerprints on certain warranty documents?

24 A. Yes, sir.

25 MR. DAVIS: If I can approach.

1 THE COURT: You may.

2 Q. (By Mr. Davis) Let me show you what's previously  
3 been admitted into evidence as State's Exhibits 114A, 114B,  
4 and 114C. Are these the warranty documents that you were  
5 referring to earlier that you lifted comparable or you  
6 developed comparable fingerprints from?

7 A. Yes, sir.

8 Q. And these are what appear to be Go-Ped warranty  
9 papers; is that correct?

10 A. Yes, sir.

11 Q. If we could go over the results of your work here.  
12 Once you developed those particular fingerprints, did you  
13 then begin the process of comparing them against a known set  
14 of fingerprints?

15 A. Yes, sir, they were compared against a card from our  
16 jail.

17 Q. State's Exhibit 120, Officer Rogers, do you  
18 recognize that?

19 A. Yes, sir, I do.

20 Q. What is State's Exhibit 120?

21 A. That is the book-in fingerprints from the arrest at  
22 10-06-2000 of a Jedidiah Isaac Murphy.

23 Q. Okay. Is that the same individual seated at the  
24 counsel table there with the kind of brownish or greenish  
25 color shirt and dark tie?

1 A. Yes, sir.

2 Q. All right.

3 MR. DAVIS: At this time we will offer State's  
4 Exhibit 120.

5 (State's Exhibit No. 120 offered)

6 MR. BYCK: No objection to 120.

7 THE COURT: Admitted.

8 (State's Exhibit No. 120 admitted)

9 Q. (By Mr. Davis) When you compare fingerprints --  
10 latent fingerprints against known fingerprints, how do you  
11 actually do that comparison?

12 A. You take the latent that's in question, lay it  
13 beside the inked known fingerprint, and then you simply look  
14 under magnifying glasses and look for those points that I  
15 described earlier.

16 Q. All right. Let's go through the results of your  
17 comparisons there. The four fingerprints that you found  
18 inside and outside the Honda automobile --

19 MS. BALIDO: Judge, we're going to object at  
20 this time. I don't believe the proper foundation has been  
21 laid for him to state any expert opinion as to the  
22 comparability of these prints.

23 THE COURT: Sustained.

24 Q. (By Mr. Davis) Officer Rogers, have you undergone  
25 training in the comparison of fingerprints, sir?

1 A. Yes, sir.

2 Q. Can you tell us briefly the type of training that  
3 you have received?

4 A. I received basic and advanced latent fingerprint  
5 training from the FBI.

6 Q. Okay. And what does that entail?

7 A. That entails a week to two-week course going over  
8 the components of fingerprints, the comparison of them, and  
9 the actual matching of fingerprints.

10 Q. Do you have any experience in the comparison of  
11 fingerprints, sir?

12 A. Yes, sir, I do.

13 Q. Can you tell us briefly the experience that you have  
14 in that area?

15 A. Approximately nine years of comparison.

16 Q. And while you've been doing that for nine years,  
17 have you received additional training or supervision while  
18 you've been employed by the Wichita Falls Police Department,  
19 as well as the Garland Police Department?

20 A. Yes, sir. I've also received AFIS training through  
21 the Texas Department of Public Safety. AFIS is the  
22 fingerprint computer.

23 Q. Is there some sort of certification that you could  
24 acquire for fingerprint comparison?

25 A. Yes, sir, there is. There's several.

1 Q. Do you hold those?

2 A. No, I do not at this time. No.

3 Q. Okay. Do you have any -- any idea of the number of  
4 fingerprints that you've compared during your career?

5 A. Thousands.

6 Q. Let me now go back to ask you whether or not you  
7 compared the latent fingerprints to the known set of  
8 fingerprints.

9 MS. BALIDO: Judge, at this time before he  
10 renders any verdict, I'd like to take this -- renders any  
11 opinion, I'd like to take this witness on voir dire.

12 THE COURT: You may.

13 Voir Dire Examination

14 By Ms. Balido.

15 Q. Officer Rogers, let me ask you a little bit about  
16 this certification process that goes on. What are the  
17 different certifications that you could hold?

18 A. There are different organizations. The primary one  
19 that most people have is through the IAI, which is the  
20 International Association for Identification. It's a tested  
21 certification on latent fingerprint examination.

22 Q. Okay. Where you actually take a test and then  
23 somebody comes back and checks your work and makes sure that  
24 what you say is right; is that correct?

25 A. Correct.

1 Q. Okay. And have you ever attempted to get this  
2 certification?

3 A. No, unfortunately departments that I work for will  
4 not pay for them, and I've not had the money to pay for it  
5 myself.

6 Q. What are some additional certifications that you  
7 could hold?

8 A. For fingerprint examination?

9 Q. Yes.

10 A. The primary certification will be latent print  
11 examination.

12 Q. Okay. And you said there were some other  
13 certifications that you didn't have. Do you know those names  
14 or those associations?

15 A. No. The primary one is the IAI.

16 Q. Okay. And you've never taken that test?

17 A. No, I have never been able to afford it.

18 Q. Okay. Have you ever gone through any sort of  
19 testing procedure in such a way that an independent person  
20 was -- would test you on whatever -- if your results are  
21 correct?

22 A. Yes.

23 Q. Okay. And is that done through the training that  
24 you've had in the past?

25 A. Yes, it is.

1 Q. Okay. But there's no certification that you got --  
2 is there -- do you get certified out of that program?

3 A. Yes.

4 Q. Okay. And is it a situation where you can either  
5 pass or fail?

6 A. Yes, it is.

7 Q. Okay.

8 MS. BALIDO: Judge, no further questions.  
9 And, Judge, we'd assert that he's not qualified since he  
10 doesn't hold this certification.

11 THE COURT: Objection is overruled.

12 Q. (By Mr. Davis) In this particular case, Officer  
13 Rogers, was your work checked by another member of the  
14 Garland Police Department?

15 A. Yes, every time a fingerprint comparison is done, it  
16 is double checked by another person.

17 Q. Now, I want to go back to the four fingerprints that  
18 were lifted from the Honda automobile, sir. Did you compare  
19 those fingerprints against the known fingerprints of  
20 Jedidiah -- Jedidiah Isaac Murphy?

21 A. Yes, sir.

22 Q. And what was the result of your comparison?

23 A. That they all had been left by Jedidiah Isaac  
24 Murphy.

25 Q. The fingerprint that you developed from State's



1 Exhibit 122, the unopened back of cigarettes there, did you  
2 compare that against the defendant?

3 A. Yes, sir.

4 Q. What was the result of your comparison?

5 A. That the fingerprint belonged to Jedidiah Isaac  
6 Murphy.

7 Q. The fingerprints that you found on State's Exhibit  
8 109, the piece of paper bearing the name of Dr. Lee, what was  
9 the result of your comparison, sir?

10 A. That the fingerprint belonged to Jedidiah Isaac  
11 Murphy.

12 Q. The piece of paper, State's Exhibit 111, that bears  
13 the name Lynk Systems paper, as well as the other two pieces  
14 of yellow paper, State's Exhibit 112 and 113, what was the  
15 result of your comparison?

16 A. That they also belonged to Jedidiah Isaac Murphy.

17 Q. The 114 -- the Exhibits 114A through E, what was the  
18 result of the fingerprints that you developed from those  
19 documents, sir?

20 A. The ones that were matched belonged to Jedidiah  
21 Isaac Murphy.

22 Q. The fingerprint that you lifted from State's Exhibit  
23 105, the Wizards Sports Cafe card, what was the result of  
24 your comparison?

25 A. They were matched to Jedidiah Isaac Murphy.

1 Q. The fingerprint off the card bearing the name of  
2 Shelley D. Featherston, Constable, I believe that's State's  
3 Exhibit 110, what was the result of your comparison?

4 A. They belong to Jedidiah Isaac Murphy.

5 Q. State's Exhibit 99, the receipt from 9620 Harry  
6 Hines, that's the one that bears the date of 10-4-2000 and  
7 the time of 11:31 p.m., what was the result of your  
8 comparison?

9 A. That fingerprint belonged to Jedidiah Isaac Murphy.

10 Q. Finally, the fingerprints that you developed off the  
11 warranty papers there in front of you, the Go-Ped warranty  
12 papers, I believe those are State's Exhibits 14A, B, and C,  
13 what were the results of your comparison, sir?

14 A. The fingerprint belonged to Jedidiah Isaac Murphy.

15 MR. DAVIS: I'll pass the witness, Your Honor.

16 Cross-Examination

17 By Ms. Balido:

18 Q. Is it Officer Rogers, or --

19 A. Investigator Rogers.

20 Q. Investigator Rogers. So are you actually a licensed  
21 peace officer?

22 A. No.

23 Q. Okay. What -- what exactly is your -- if you're not  
24 a licensed police officer and you work for Garland police,  
25 what exactly are you?

1 A. I'm a forensic investigator.

2 Q. Okay. So you're a civilian?

3 A. Yes.

4 Q. All right. Mr. Rogers, let me ask you a little bit  
5 about the investigation that went on let's just say at the  
6 time you got out to the house on Lamar Street where the car  
7 was found. Do you make the determination of what pictures  
8 you take and what things you need to pull prints off of or  
9 how is that done?

10 A. Yes, I make a determination. Plus, if my superiors  
11 say take these photographs as well, I'll take those as well.

12 Q. Okay.

13 A. But I do make my own determination, yes.

14 Q. Okay. And who makes the determination of what items  
15 are actually going to be fingerprinted?

16 A. That will be my primary duty.

17 Q. Okay.

18 MS. BALIDO: May I approach the witness, Your  
19 Honor.

20 THE COURT: You may.

21 Q. (By Ms. Balido) Now, Investigator Rogers, I'm  
22 showing you pictures of State's Exhibit Number 81, State's  
23 Exhibit Number 79, State's Exhibit Number 80, State's Exhibit  
24 Number 78, and State's Exhibit Number 77, and those are the  
25 pictures that you took or some of the pictures that you took

1 regarding the car; is that correct?

2 A. Yes.

3 Q. Okay. On State's Exhibit Number 77, it shows a spot  
4 of blood on the trunk seal; is that correct?

5 A. Yes, it is.

6 Q. Okay. Did you try to lift fingerprints off of any  
7 area around the trunk?

8 A. Yes.

9 Q. Okay. And what was the result of that?

10 A. None made.

11 Q. And that's your opinion, is that correct, that were  
12 none there?

13 A. Yes.

14 Q. And what area of the trunk did you try to test?

15 A. Test for fingerprints?

16 Q. Yes.

17 A. The exterior area, the smooth surfaces.

18 Q. Okay. Because the bumps areas or some of the  
19 plastic areas don't usually hold fingerprints?

20 A. It breaks up the fingerprint pattern.

21 Q. All right. And did you do that around the entire  
22 area of the trunk?

23 A. Yes.

24 Q. Okay. So if someone was leaning on the trunk like  
25 this --

1 A. Uh-huh.

2 Q. -- you'd try to get either a palm print or a  
3 fingerprint off; is that correct?

4 A. Yes.

5 Q. Did you get any partials?

6 A. Yes.

7 Q. Okay. And did you try to compare any of the  
8 partials to any known fingerprints?

9 A. Yes, all the fingerprints that were lifted were  
10 compared.

11 Q. Okay. To Jedidiah Isaac Murphy?

12 A. To every suspect they have.

13 Q. And who are all the suspects?

14 A. The primary one is Jedidiah Isaac Murphy.

15 Q. Okay. Did you compare it to any other suspects?

16 A. I did not.

17 Q. Okay. Did you ever compare any sort of fingerprints  
18 or any partial fingerprints that you lifted from a man by the  
19 name of Treshod Tarrant?

20 A. I did not, no.

21 Q. Okay. And do you make that primary decision as to  
22 who you should test and you should not test, or compare --  
23 I'm sorry, not test?

24 A. No, the detectives of the case submit a request for  
25 fingerprint comparisons.

1 Q. Okay. And that would be Detective Myers?

2 A. Yes. In that particular case.

3 Q. Let me ask you also specifically in regard to  
4 State's Exhibit Number 81, do you see what's located inside  
5 the car?

6 A. Yes.

7 Q. And what is located in -- what's primarily -- what's  
8 primarily depicted in the photo?

9 A. The Hennessy whiskey bottle.

10 Q. And there's also a Diet Coke can?

11 A. Yes.

12 Q. Did you attempt to test that or -- excuse me, did  
13 you attempt to compare or first lift latent fingerprints from  
14 that?

15 A. Yes.

16 Q. And were you able to?

17 A. I don't believe so.

18 Q. Okay. Did you get any partials on that?

19 A. Yes.

20 Q. Okay. Did you try to compare the partials to any  
21 known fingerprints?

22 A. The partial prints that I got? Yes.

23 Q. Okay. And was the only person that you compared  
24 partial prints to in that situation Jedidiah Isaac Murphy?

25 A. That I compared, yes.

1 Q. Okay. Do you know of anybody else comparing any  
2 other prints that you know of?

3 A. There was three other investigators that did  
4 comparisons as well.

5 Q. Okay. But just what you did, you said that you  
6 didn't compare them to anybody else?

7 A. Correct.

8 Q. Do you know of anyone that compared Treshod  
9 Tarrant's fingerprints to any of the prints that you either  
10 lifted or developed through the anhydron that day?

11 A. Not that I know of, no.

12 Q. On State's 80, I want to show you that for -- see if  
13 we can do it this way. There were a number of items in the  
14 back of the trunk; is that correct?

15 A. Yes.

16 Q. And a number of items that are covered in blood; is  
17 that also correct?

18 A. Yes.

19 Q. And is there also -- what is this right here, this  
20 big square item?

21 A. It's a suitcase.

22 Q. Okay. And did you pull that suitcase out as well?

23 A. Yes, everything in the trunk is pulled out.

24 Q. All right. And did you determine who owned that  
25 suitcase?

1 A. I did not at that time, no.

2 Q. Okay. Did you find out later whose suitcase it was?

3 A. No.

4 Q. Okay. Did it have any tags on it or anything that  
5 you made any records of whose it might be?

6 A. I don't believe so, no.

7 Q. And you're looking at your report when you're  
8 testifying; is that correct?

9 A. This is all it is.

10 Q. And you testified with the prosecutor -- or the  
11 prosecutor asked you about some luminal that was used on a  
12 bathtub; is that correct?

13 A. Yes, ma'am.

14 Q. And what was the location of that bathtub?

15 A. It was in a bathroom on Barclay.

16 Q. Okay. On Barclay? All right. And you said that --  
17 that sometimes the luminal comes back showing up bleach as  
18 well?

19 A. Yes, it's primary reaction is iron.

20 Q. Okay.

21 A. So anything with iron it will react to it.

22 Q. And did you try to scrape any of those or get a  
23 sample from any of those places where it showed up iron?

24 A. No.

25 Q. Okay. You just showed up luminal and -- but you



1 didn't pry to preserve anything for testing for blood to see  
2 if it was actually blood or if it could be bleach?

3 A. My -- it was in my opinion and the others there  
4 that --

5 MS. BALIDO: Judge, I'm going to object to  
6 hearsay based on the opinion of other people.

7 THE COURT: Sustained.

8 Q. (By Ms. Balido) Just what was your opinion?

9 A. It was my opinion it was an insufficient amount  
10 there.

11 Q. Okay. So while you were actually in the house on  
12 Barclay did you -- was it you that was making the decisions  
13 on what to seize and what not to seize or was it kind of a  
14 group effort or was it primarily Detective Myers?

15 A. It was primarily Detective Myers.

16 Q. Okay. So did you actually have a conversation with  
17 the person who owned the house there?

18 A. No, I don't believe I did.

19 Q. Okay. And did you basically take from the residence  
20 what Detective Myers gave you to take from the residence?

21 A. He pointed it out, and I collected it.

22 Q. Let me ask you a little bit about when you first  
23 went out to the scene where Ms. Cunningham's body was found.  
24 Where did you park your vehicle?

25 A. Where did I park my vehicle? On the road.

1 Q. On the road?

2 A. Yes.

3 Q. Did you ever attempt to find any tire tracks or  
4 anything like that that might have been left by any  
5 vehicle -- any vehicle or vehicles that might have been out  
6 at the Livingston Hill location?

7 A. No.

8 Q. And it was dark when you got there; is that correct?

9 A. Yes.

10 Q. And when you got there, there were people from the  
11 Edgewood Police Department and the Van Zandt County Sheriff's  
12 Department; is that correct?

13 A. Yes.

14 Q. And were people walking around the location?

15 A. On the road, yes.

16 Q. And were they actually walking down towards the  
17 location in the creek where the body was actually found?

18 A. No, the -- it was extremely steep. Nobody wanted to  
19 walk down there.

20 Q. Okay. So would it be safe to say that it would be  
21 hard to walk down there at all?

22 A. From the angle where we were parked, yes.

23 Q. Okay. And that was on which side -- I mean, the  
24 roadside?

25 A. The roadside, yes.

1 Q. Okay. When you got out there, who was out there?

2 A. The people you mentioned, Commander and Lieutenant  
3 from my department.

4 Q. Commander Lay?

5 A. Yes.

6 Q. And Lieutenant Thompson?

7 A. Uh-huh.

8 Q. You need to say yes or no for the record.

9 A. Yes.

10 Q. And was Detective Myers out there at that point?

11 A. I don't remember.

12 Q. Okay. Was Detective Tooke out there at that point?

13 A. Also, I don't remember that.

14 Q. And were the vehicles that carried everybody out  
15 there to Livingston Hill, were they also on the road?

16 A. Yes, they were.

17 Q. Okay. And is it safe to say that people were  
18 walking back and forth and walking from the vehicles to the  
19 edge of -- I guess we'll call that an eddy or whatever that  
20 is down there, to the edge of where the creek starts, back  
21 and forth to their vehicles, getting things or getting  
22 flashlights and that sort of thing?

23 A. Yes.

24 Q. Okay. Did anyone ever try to secure that area to  
25 determine if there was any other evidence that could be found

1 in the road area?

2 A. Not to my knowledge.

3 Q. Okay. And would that be your primary responsibility  
4 to cordon off whatever you thought was important --

5 A. Had I been there before the numerous other people,  
6 yes, I would have.

7 Q. Okay. And does the same thing go for out at the --  
8 out at the scene -- excuse me, at the scene of where Ms.  
9 Cunningham's car was found? When you got there, there were a  
10 number of officers there; is that correct?

11 A. Correct.

12 Q. And were there a number of civilians there, also?

13 A. There was three -- two other civilians there.

14 Q. Okay. And there was also a couple of people that --  
15 or you may or may not know this that worked for the Edgewood  
16 Police Department, but are not peace officers?

17 A. I'm not sure about that.

18 Q. Okay. About how many people do you think were out  
19 there?

20 A. That I saw? Probably four to five.

21 Q. Okay. Was the -- was -- when you got there, was the  
22 trunk open or shut?

23 A. It was shut.

24 Q. All right. And how did you go about opening the  
25 trunk?

1 A. We towed the car back to Garland, and it was opened  
2 in the maintenance bay.

3 Q. Okay. So the pictures that are taken are actually  
4 in the maintenance bay. They weren't taken at the scene?

5 A. No, the -- they were both actually. One was taken  
6 in front of the house.

7 Q. Okay.

8 A. Then the others were taken at the maintenance place  
9 where we opened it up.

10 Q. Okay. So the pictures with the trunk open, is that  
11 at the scene or is that in the maintenance bay?

12 A. That's at the maintenance bay.

13 Q. Okay. Were you aware that Deputy Rose of the Van  
14 Zandt County Sheriff's Department had already opened the  
15 trunk before you got there?

16 A. No.

17 Q. Okay. And who did you get the keys from the  
18 trunk -- for the trunk from?

19 A. One of the officers there.

20 Q. Okay. You don't remember who it was?

21 A. No, ma'am.

22 Q. When you got there, was there -- was there any sort  
23 of police tape around the vehicle or anything like that  
24 blocking people off from access to the car?

25 A. Yes.

1 Q. And do you know who put that up there?

2 A. It was there when I arrived.

3 Q. Did you test on the -- on the trunk of the vehicle  
4 to see whether or not there were palmprints or handprints or  
5 fingerprints on the actual trunk of the vehicle?

6 A. Yes.

7 Q. And did you find any?

8 A. I believe we found some partials, yes.

9 Q. Okay. Did you find -- compare those to Jedidiah  
10 Isaac Murphy?

11 A. I'm not sure if those were comparable prints or not.

12 Q. Okay. Did you ever compare those to Treshod  
13 Tarrant? You personally?

14 A. I did not personally, no.

15 Q. Okay. Can you remember or do any of your reports  
16 reflect that -- which hand was being used or which hand, if  
17 you could tell, there was a palmprint or a partial palmprint?

18 A. No.

19 Q. Okay. So you wouldn't know on a palmprint whether  
20 or not it was the right hand or the left hand?

21 A. On -- it would depend on how much of the palmprint  
22 was there.

23 Q. Okay.

24 A. If it's just a smudge, perhaps not. If it's a real  
25 good, palmprint, yes.

1 Q. Okay. But there's nothing that you know of in your  
2 reports that would indicate whether or not you found a right  
3 -- a partial of a right palmprint or a partial of a left  
4 palmprint?

5 A. I don't believe so.

6 Q. Mr. Rogers, let me ask you some questions about --  
7 about handling blood evidence.

8 A. Okay.

9 Q. Okay? Have you been trained on how to handle blood  
10 evidence?

11 A. Yes.

12 Q. And how has that come about? Because it didn't  
13 happen -- did you go to the police academy?

14 A. No.

15 Q. Okay. And Garland's got their own police academy  
16 that you could have gone to, but you didn't, right?

17 A. The police academy is for police officers.

18 Q. Okay. And that's not what you are?

19 A. No.

20 Q. Okay. And -- but you have gone through classes in  
21 regard to the handling of blood evidence?

22 A. Yes.

23 Q. Okay. And does that include the way that things  
24 should be stored for blood analysis at a later time?

25 A. Yes.

1 Q. And it's important to keep things separate; is that  
2 correct?

3 A. Yes.

4 Q. And it's important to let things dry properly before  
5 they're actually stored; is that also correct?

6 A. Yes, it is.

7 Q. Because if there's wet blood and things get folded  
8 on top of each other, then what the evidence could show  
9 doesn't necessarily show what the true thing -- what really  
10 happened. Does that make any sense?

11 A. (Nods head.)

12 Q. Okay. Let me start back over. It's very important  
13 to follow all these procedures because if you fold wet blood  
14 on top of wet blood or wet blood on top of something that  
15 does not have blood on it, the wet blood could drip on it and  
16 indicate something to you that's not necessarily true?

17 A. Yes.

18 Q. Okay. And did you follow -- and where did you learn  
19 these practice procedures?

20 A. Crime scene reconstruction schools, blood splatter  
21 analysis schools.

22 Q. Okay. And where did these take place?

23 A. D.P.S. in Austin and also the Mansfield PD.

24 Q. The Mansfield Police Department?

25 A. Yes.



1 Q. Okay. And when was the last time you attended one  
2 of these classes?

3 A. Approximately six months ago.

4 Q. Okay. But that six months ago would be after this  
5 case happened?

6 A. Yes.

7 Q. Okay.

8 A. And before. It's a -- I've been to three or four  
9 crime scene schools, and each of them go over blood handling.

10 Q. Okay.

11 A. It's pretty common to every school.

12 Q. Okay. How many beer cans do you think you found in  
13 the car?

14 A. A couple. I couldn't say for sure.

15 Q. Okay. So it's not listed in your inventory report?

16 A. No.

17 Q. And isn't it important to include in your inventory  
18 report everything that you found at the scene?

19 A. If you believe it's vital to the case, yes.

20 Q. And would beer cans -- were they empty beer cans or  
21 full beer cans?

22 A. I believe they were full.

23 Q. They were full?

24 A. Uh-huh.

25 Q. Did you find any empty beer cans?

1 A. Not that I recall.

2 Q. Was the Coke that you found in the back -- that's  
3 pictured in the back seat of the car, was that empty?

4 A. Yes.

5 Q. Okay. Did you test that for fingerprints?

6 A. Yes.

7 Q. Okay. Did you find anything -- I'm sorry, I keep on  
8 saying testing for fingerprints. Did you compare those  
9 fingerprints to any other fingerprints in this case?

10 A. I don't believe there were any comparable prints off  
11 that.

12 Q. Okay. Did you try to compare any of the partials  
13 that you might have?

14 A. If they were comparable prints.

15 Q. Okay. Did you compare any of those personally to  
16 Treshod Tarrant?

17 A. No, I did not.

18 Q. Who else tested or who else compared fingerprints in  
19 this case?

20 A. Virginia Long, Holly Tharp, Bill Rice, and Vicki  
21 Stanley.

22 Q. Okay. Anybody else -- were you the only person in  
23 charge of collecting the evidence at the scene? Were you the  
24 only, I guess, forensic tech?

25 A. At which scene?

1 Q. At the -- well, let's start with seizing the items  
2 from the car?

3 A. Yes.

4 Q. Were you the only person in charge of lifting latent  
5 fingerprints from the vehicle?

6 A. Yes.

7 Q. Were you the only person that was in charge of  
8 deciding which items in the car to put into your evidence log  
9 and which items not to put into your evidence log?

10 A. Yes.

11 Q. What was done with the rest of the stuff that wasn't  
12 logged in as evidence?

13 A. It was placed in the property room.

14 Q. Okay. So you don't log it in as evidence, but you  
15 still place it in the property room?

16 A. Right.

17 Q. So how do you know what's in there and not in there  
18 if you just place it in the property room?

19 A. Because the items the property room takes, they  
20 inventory.

21 Q. Oh.

22 MS. BALIDO: Judge, just let me review the  
23 reports and see if there's anything there.

24 THE COURT: Yes, ma'am.

25 Q. (By Ms. Balido) Let me ask you a question about

1 this AFIS computer. AFIS stands for what?

2 A. Automated fingerprint identification system.

3 Q. Okay. Is that one of those computers that like you  
4 can see on TV where you can plug in some fingerprints and it  
5 pops up who -- some comparable matches?

6 A. In a roundabout way, yes.

7 THE COURT: If there's a comparable in the  
8 inventory of AFIS.

9 MS. BALIDO: Yes.

10 Q. (By Ms. Balido) And who is included in the AFIS  
11 computer that you know of? What is the database composed of?

12 A. The database is composed of every fingerprint card  
13 from arrests in the State of Texas.

14 Q. And does it also include like judges or prosecutors  
15 or people like that as well?

16 A. It's anybody with a state license is also included.

17 Q. So y'all probably have mine, since I'm licensed by  
18 the State of Texas.

19 A. I would say.

20 Q. Any of the comparable prints that you had in this  
21 case, did you put it through the computer?

22 A. I did not, no.

23 THE COURT: Does Garland have an AFIS?

24 THE WITNESS: Yes, sir.

25 THE COURT: For the benefit of taxpaying

1 jurors, how much does the AFIS cost, if you know?

2 THE WITNESS: Approximately \$100,000. That's  
3 just the equipment, not the maintenance.

4 MS. BALIDO: Judge, I don't believe I have any  
5 further questions at this time.

6 THE COURT: Sheriff, let's take a break at  
7 this time for the benefit of the jurors.

8 THE BAILIFF: All rise.

9 (Jury recessed from courtroom.)

10 THE BAILIFF: All rise.

11 (Jury returned to courtroom.)

12 THE COURT: Let the record reflect the jury is  
13 returning to the courtroom at this time.

14 Jury may be seated.

15 Mr. Murphy, counsel, visitors in the gallery, you  
16 may be seated.

17 Ms. Balido, the defense may continue, ma'am.

18 MS. BALIDO: I believe I passed the witness  
19 back to the State, Judge.

20 THE COURT: All right. Anything, Mr. Davis?

21 MR. DAVIS: Yes, sir.

22 Redirect Examination

23 By Mr. Davis:

24 Q. Investigator Rogers, a couple of questions. First  
25 of all, did you examine the interior passenger compartment of

1 that car for possible blood evidence?

2 A. Yes.

3 Q. Did you find any evidence of blood inside the car?

4 A. No, sir.

5 Q. Now, with reference to what you found in the trunk,  
6 would it be fair to say that you found men's clothing inside  
7 the trunk and inside the car?

8 A. Yes, sir.

9 Q. Ms. Balido referred to a suitcase.

10 MR. DAVIS: If I could approach, Your Honor.

11 THE COURT: You may.

12 Q. (By Mr. Davis) State's Exhibit Number 98, does this  
13 appear to be the suitcase that you recovered from that  
14 vehicle?

15 A. Yes.

16 Q. Did it contain men's clothing?

17 A. I believe it did, yes.

18 Q. Okay. Have you had an opportunity to look inside?

19 A. Not since that time, no, sir. It appears to be  
20 T-shirt, jeans, men's clothing.

21 MR. DAVIS: Your Honor, at this time we will  
22 offer State's Exhibit 98 for demonstrative purposes only.

23 (State's Exhibit No. 98 offered)

24 MR. BYCK: No objection to 98 for  
25 demonstrative purposes only, Your Honor.

1 THE COURT: Admitted.

2 (State's Exhibit No. 98 admitted)

3 Q. (By Mr. Davis) State's Exhibit Number 97, which is  
4 a -- a green duffle bag with some additional clothing inside,  
5 again, was this recovered from the Honda automobile, sir?

6 A. Yes, sir.

7 MR. DAVIS: Again, for demonstrative purposes  
8 only, we will offer State's Exhibit 97.

9 (State's Exhibit No. 97 offered)

10 MR. BYCK: No objection for stated purpose.

11 THE COURT: Admitted for stated purpose.

12 (State's Exhibit No. 97 admitted)

13 Q. (By Mr. Davis) State's Exhibit 123, which is a  
14 black garbage bag, does this appear to contain a large amount  
15 again of men's clothing, blue jeans, T-shirts, and assorted  
16 other items?

17 A. Yes.

18 MR. DAVIS: Again, for demonstrative purposes  
19 only, we'll offer State's Exhibit 123.

20 (State's Exhibit No. 123 offered)

21 MR. BYCK: No objection to 123 for stated  
22 purposes only.

23 THE COURT: Admitted.

24 (State's Exhibit No. 123 admitted)

25 Q. (By Mr. Davis) Finally, a garbage bag with

1 contents, State's Exhibit 124, Investigator, does that  
2 contain, again, a green camo-colored duffle bag again with  
3 assorted men's clothing?

4 A. Yes, sir.

5 Q. Dirty?

6 A. Yes, sir.

7 Q. Okay.

8 MR. DAVIS: Having closed it now, I'm going to  
9 offer this for demonstrative purposes only, State's Exhibit  
10 Number 124, Your Honor.

11 (State's Exhibit No. 124 offered)

12 MS. BALIDO: Judge, if I could just inspect it  
13 just for a second.

14 THE COURT: You may.

15 MR. BYCK: Good, no objection, Your Honor.

16 THE COURT: Admitted.

17 (State's Exhibit No. 124 admitted)

18 MR. DAVIS: No further questions, Your Honor.

19 THE COURT: Ms. Balido.

20 Recross-Examination

21 By Ms. Balido:

22 Q. The duffle bag that's in --

23 MS. BALIDO: What's that.

24 MR. BYCK: 124.

25 Q. (By Ms. Balido) -- 124, is that the duffle bag that



1 came from where?

2 A. The trunk.

3 Q. The trunk. Did you -- were there two duffle bags in  
4 the trunk?

5 A. There was a duffle bag and a camo bag.

6 Q. Okay. And the camo bag is the one that's in State's  
7 124, the stuff that smells?

8 A. Yes, ma'am.

9 Q. Or is musty or whatever?

10 A. Yes.

11 Q. And where did that come from?

12 A. The trunk as well.

13 Q. That didn't come from the creek?

14 A. All the items I collected from the trunk were in the  
15 trunk, yeah.

16 Q. Okay.

17 MS. BALIDO: Pass the witness, Judge.

18 MR. DAVIS: No further questions.

19 THE COURT: Either side have any objection to  
20 the witness being excused, subject to recall given his --

21 MR. DAVIS: No objection.

22 MR. BYCK: No objection.

23 THE COURT: -- location and proximity to the  
24 courthouse? Thank you. You are excused, subject to recall.  
25 You may step down. Free to leave the courthouse.

1 MR. DAVIS: The State will call David  
2 Davenport.

3 MS. BALIDO: Judge, may I approach the  
4 exhibits for a moment.

5 THE COURT: You may.

6 Mr. Davis, for the benefit of the next witness, do  
7 you want the exhibits to remain or --

8 MR. DAVIS: I don't believe it will be  
9 necessary for this witness, Your Honor.

10 THE COURT: The court reporter has a great  
11 responsibility in taking care of the evidence.

12 MR. DAVIS: Yes, sir.

13 THE COURT: I know she is very mindful of  
14 monitoring each and every one of them.

15 Ms. King, if you need a moment to assemble those  
16 items for safekeeping, you may do so.

17 Ms. King, for your purpose, is that adequate for  
18 right now?

19 Would you raise you right hand, please.

20 (Witness sworn.)

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DAVID DAVENPORT

was called as a witness by the State and, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Davis:

Q. Sir, would you please tell us your full name?

A. David Michael Davenport.

Q. Sir, how are you employed?

A. I'm employed with the Department of Public Safety Crime Lab in Garland, Texas.

Q. What's your title with the Texas Department of Public Safety?

A. I'm a criminalist.

Q. And what exactly is a criminalist with the D.P.S.?

A. A criminalist -- my job duties include receiving evidence, analyzing evidence, maintain the disposition of the evidence, analyzing, as well as reporting findings after analyzing the evidence, and testifying in court when necessary.

Q. Could you tell the members of the jury a little bit about your experience and training for your present position?

A. I have a Bachelor of science degree in forensic science from Eastern Kentucky University. After I completed my degree, I had in-house training with the Department of

1 Public Safety. This included completing a series of  
2 proficiency tests, hands-on mock cases, written tests,  
3 supervised casework.

4 Q. How long have you been with D.P.S.?

5 A. Since January of 2000.

6 Q. Where is your lab located at?

7 A. It's in Garland, Texas, off of I-30.

8 Q. Mr. Davenport, I want to direct your attention back  
9 to November of last year. And at that time, sir, did you  
10 receive several items from the Dallas County Medical  
11 Examiners office?

12 A. Yes, sir.

13 Q. Among them let me ask you, did you receive a blood  
14 sample that purported to be that of a Bertie Cunningham?

15 A. Yes, we did.

16 Q. Did you also receive a known head hair sample  
17 belonging to Bertie Cunningham?

18 A. Yes, sir.

19 Q. Did you also receive certain hairs that had been  
20 recovered from Ms. Cunningham's sweat pants?

21 A. Yes, sir.

22 Q. And finally, did you receive a sexual assault kit?

23 A. Yes, sir.

24 Q. Just so the jury can understand, when we talk about  
25 a sexual assault kit, is that a set of items that's collected

1 during the autopsy generally?

2 A. That's correct.

3 Q. Now, let me talk in a little bit greater detail  
4 about that. When you had the sexual assault kit, what were  
5 you looking for as possible evidence of a sexual assault?

6 A. Generally in the sexual assault kits we're looking  
7 for semen, semen specific components.

8 Q. In this particular case did you see any evidence  
9 whatsoever of a sexual assault having occurred to Ms.  
10 Cunningham?

11 A. No, sir.

12 Q. So as I understand, there's no semen or sperm  
13 present at that time, correct?

14 A. That's correct.

15 Q. Now, in addition to those items, did you receive  
16 some items from the Garland Police Department first?

17 A. Yes, sir.

18 Q. Did you receive a bloody JC Penney bag?

19 A. Yes, sir.

20 Q. Did you also receive a white T-shirt with possible  
21 blood evidence on it?

22 A. Yes, sir.

23 Q. In addition to that, did you receive various hairs  
24 that according to the report had been recovered close to  
25 where the body was in a creek in Edgewood, Texas?

1 A. Yes, sir.

2 Q. Your job when you receive that -- that possible  
3 blood evidence was to do what?

4 A. My job is to look for blood evidence. And if I find  
5 any, to confirm that it's of a human origin.

6 Q. Do you have some sort of presumptive test that you  
7 do if you see possible blood evidence?

8 A. Yes, sir. What's involved in that is merely taking  
9 a cotton swab and wetting the cotton swab and rubbing the  
10 cotton swab against the stain so you transfer some of the  
11 stain on the swab. And if the chemicals on the cotton  
12 swab -- and if the swab changes color, then that's positive  
13 for possibly human blood.

14 Q. Okay. So at least that tells you that you have  
15 blood, and then you do a later test to determine if it's  
16 human blood; is that right?

17 A. That's correct.

18 Q. With regards to the JC Penney bag, did you detect  
19 possible blood?

20 A. Yes, sir.

21 Q. And did you go one step further and determine that  
22 it was human blood?

23 A. Yes, sir.

24 Q. The white T-shirt --

25 MR. DAVIS: If I could approach, Your Honor.

1 THE COURT: You may.

2 Q. (By Mr. Davis) Mr. Davenport, do you recognize  
3 State's Exhibit 91C as being the white T-shirt that was  
4 submitted to you by the Garland Police Department?

5 A. Yes, sir.

6 Q. Tell the members of the jury what you did with  
7 State's Exhibit -- if you want me to, I can hold that up  
8 there for you. With State's Exhibit 91C, exactly what did  
9 you do when you received this particular item?

10 A. The blue writing you see here was not present on the  
11 shirt when it was submitted. I put this blue writing here.  
12 I did a visual examination looking for anything that looks  
13 like blood. It's that simple. And then after I see stains  
14 that I think might possibly be blood, I test them with the  
15 cotton swab test I spoke of earlier.

16 Q. Did you actually cut out certain portions to do the  
17 testing?

18 A. Yes, sir.

19 Q. Did you detect possible blood?

20 A. Yes, sir.

21 Q. Did you later determine that to be human blood?

22 A. Yes, sir.

23 Q. Let me talk to you about the hairs that were  
24 submitted to you. Well, let me go back one step further.

25 Did you also receive certain possible blood samples

1 that had been obtained from the trunk of a Honda automobile?

2 A. Yes, sir.

3 Q. And again, did you do the testing with those  
4 samples?

5 A. Yes, sir.

6 Q. And did you finally determine that there was human  
7 blood present there also?

8 A. Yes, sir.

9 Q. Now, let me go forward to the hairs that were  
10 submitted to you for some sort of analysis. In this  
11 particular case what sort of analysis did you do with the  
12 hair that had purportedly come from a rock near the body of  
13 Ms. Cunningham? What did you do with that?

14 A. The hair submitted from the rock were visually  
15 examined. That's just looking at hairs with the naked eye.  
16 I looked at the hairs that were submitted from the victim,  
17 the known head hairs from the victim, and just visually  
18 compared them with the rock -- the hairs from the rock above  
19 the culvert.

20 Q. How about the hair? Was there hair also on the  
21 complainant or Ms. Cunningham's sweat pants?

22 A. Yes, there was.

23 Q. Did you do the same kind of microscopic comparison  
24 there, too?

25 A. It's not a microscopic. It's simply visual exam



1 with the naked eye.

2 Q. Finally, was there a hair that had been recovered  
3 from a JC Penney bag also?

4 A. Yes, sir.

5 Q. Did you do the same kind of comparison with it?

6 A. Yes, sir.

7 Q. What were the results of your visual comparison with  
8 the hair from the rock, the JC Penney bag, and the sweat  
9 pants?

10 A. All of these hairs submitted were visually  
11 consistent with the victim's known head hair.

12 Q. Now, do you yourself do any DNA analysis?

13 A. No, sir, I do not.

14 Q. All right. In this particular case once you  
15 determine that human blood was present, did you then preserve  
16 those items so that someone else out there at the lab, mainly  
17 John Donahue, could do DNA testing on them?

18 A. Yes, sir.

19 Q. With regards to the hairs that you did the visual  
20 comparison on, is there certain types of DNA tests that can  
21 also be run on hair?

22 A. Yes, sir.

23 Q. Does your lab perform those types of test?

24 A. Yes.

25 Q. Did you then send those hairs on to Mr. Donahue

1 again for DNA testing?

2 A. Yes, sir.

3 MR. DAVIS: Thank you, sir. I'll pass the  
4 witness.

5 Cross-Examination

6 By Ms. Balido:

7 Q. Mr. Davenport, did you make any reports regarding  
8 your findings?

9 A. I have the report here.

10 Q. Okay. Is there just one report -- I'm just --

11 MS. BALIDO: May I approach the witness.

12 THE COURT: Sure, certainly.

13 Q. (By Ms. Balido) I was tendered a report from the  
14 State. I just want to make sure it's the same one.

15 A. Okay.

16 Q. Okay.

17 MS. BALIDO: Judge, I just need to put my  
18 hands on one other exhibit.

19 Judge, I don't have any questions of this witness.

20 MR. DAVIS: Nothing further.

21 THE COURT: Thank you. You may step down.  
22 Excused, subject to recall.

23 MR. DAVIS: The State will call John Donahue.

24 (Witness brought forward and sworn.)

25 THE COURT: Mr. Davis.

1 MR. DAVIS: Thank you.

2 JOHN DONAHUE

3 was called as a witness by the State and, after having been  
4 first duly sworn, testified as follows:

5 Direct Examination

6 By Mr. Davis:

7 Q. Sir, first of all, would you please tell us your  
8 full name?

9 A. John Donahue.

10 Q. Mr. Donahue, how are you employed?

11 A. I'm employed by the Texas Department of Public  
12 Safety's Crime Laboratory in Garland, Texas.

13 Q. What is your present position?

14 A. I'm a serology DNA analyst for the department.

15 Q. Can you please tell us, first of all, a little bit  
16 about your educational and professional training for your  
17 present position?

18 A. I have a Bachelors degree from the University of  
19 Tennessee with a major in zoology. I have three years of  
20 graduate work in microbiology at Indiana University where I  
21 will be completing my thesis later this month. I've been  
22 trained by the Texas Department of Public Safety in both  
23 basic forensic serology, as well as forensic DNA analysis.  
24 I've also received various other trainings in forensic  
25 analysis and investigation, along with forensic DNA analysis

1 from other organizations.

2 Q. First of all, you told us that you did some serology  
3 work. What is serology?

4 A. The analysis of body fluids, basically.

5 Q. Would that include blood?

6 A. Yes.

7 Q. You also told us that you were a DNA analyst. Can  
8 you tell us what your duties and responsibilities are there?

9 A. Basically I examine items of evidence for any --  
10 items for any type of evidence that might contain DNA, such  
11 as body fluids, blood, semen, saliva, also for hairs and  
12 other things that might contain DNA. I then perform DNA  
13 analyses on these questioned items or these items of  
14 evidence, compare them to known reference samples to  
15 determine match or an exclusion. I also report my findings  
16 as part of my duties, and I testify in court as to those  
17 findings.

18 Q. In this particular case did you receive several  
19 items for analysis from David Davenport who also works with  
20 you?

21 A. Yes.

22 Q. I want to ask you, first of all, if you could -- if  
23 you could briefly give us an overview of what is DNA, first  
24 of all?

25 A. Sure. Basically DNA is a molecule -- if you want to.

1 visualize it, it looks like a twisted ladder that acts as the  
2 genetic material for you. It's present in the nuclei or in  
3 the nucleus of every cell in your body except red blood  
4 cells. They don't have a nucleus, so basically you can find  
5 DNA in skin cells, white blood cells, sperm cells, egg cells,  
6 any types of cells like that will have DNA present in them.  
7 DNA, as I said, is the genetic materials that encodes all the  
8 information for your body, so basically it's individualized  
9 to you and no one else, except in the case of identical  
10 twins. Because DNA is unique and individualized, we can  
11 analyze DNA and compare it to known samples for comparison  
12 purposes.

13 Q. Are there different types of DNA tests?

14 A. Yes, there are.

15 Q. Can you tell us the type of DNA testing that your  
16 particular crime lab does?

17 A. We do what is called PCR testing, which is short for  
18 polymerase chain reaction. What that basically entails is  
19 that we will extract DNA from samples, whether they're  
20 evidence or reference samples, and then we'll use  
21 biochemical, a biochemical reaction called PCR to amplify  
22 that amount of DNA to a quantity that we can analyze and  
23 determine results from.

24 Q. So if you had -- if you had a blood sample from me,  
25 for instance, could you obtain my DNA profile?

1 A. Yes.

2 Q. And if you had then an unknown or you had a blood  
3 source, blood -- blood source over here, you didn't know who  
4 it came from, could you extract DNA from that blood and then  
5 compare it against my DNA profile to determine if I could be  
6 the source for that blood over here?

7 A. Sure. There are always certain parameters that you  
8 have to worry about such as degradation of the questioned  
9 sample and other types of things that would render a DNA test  
10 basically inconclusive because you didn't recover anything,  
11 but assuming that the stain was not treated in any, I guess,  
12 degradory (sic) ways, then, yeah, I could recover it.  
13 Degradation could occur from, you know, any number of  
14 manners, but, yeah, basically.

15 Q. So, for instance, assuming that the blood hadn't  
16 been out in the elements too long or chemicals hadn't been  
17 applied to it maybe, as long as those problems aren't  
18 present, then you can extract DNA material, correct?

19 A. Right.

20 Q. In this particular case from David Davenport, did  
21 you receive a blood sample that was belonging to a person by  
22 the name of Bertie Cunningham?

23 A. Yes. It was dried on a -- I believe it was cotton  
24 gauze.

25 Q. Were you able to get a DNA profile for Bertie

1 Cunningham then?

2 A. Yes.

3 Q. Any problems there?

4 A. No.

5 Q. Did you receive from David Davenport a blood sample  
6 that had come from a Honda trunk seal?

7 A. Yes, I did.

8 Q. Were you able to obtain a DNA profile from that  
9 blood sample?

10 A. Yes.

11 Q. Did you receive a blood sample that had come from a  
12 JC Penney bag?

13 A. Yes.

14 Q. Again, were you able to obtain a DNA profile?

15 A. I was.

16 Q. Did you receive blood samples that had come from a  
17 white T-shirt?

18 A. Yes, I did.

19 Q. Were you able to obtain DNA profile for that blood  
20 sample also?

21 A. Not a full profile, but I did receive -- or did  
22 obtain usable DNA profiles from them.

23 Q. Okay. Now, let's start with the blood sample that  
24 came from the Honda trunk seal. Did you compare the DNA  
25 profile from that sample to the DNA profile of Ms.

1 Cunningham?

2 A. I did.

3 Q. And what was the result of that comparison?

4 A. I recovered -- the DNA profile that I recovered from  
5 the trunk seal was consistent with the DNA profile from  
6 Bertie Cunningham at eight of the nine genetic markers that  
7 were examined.

8 Q. How about the ninth genetic marker?

9 A. I didn't get any reaction from that.

10 Q. So would it be fair to say at the ninth marker --  
11 actually these markers are things that are individual to each  
12 individual, correct?

13 A. Right.

14 Q. Poor way of phrasing it, but you're matching up  
15 those points along a line with a known sample, aren't you?

16 A. Right. What we're doing with this type of testing,  
17 the amplification kit that we use amplifies nine different  
18 genetic markers in a person's DNA, so we're looking at a  
19 result at each marker. And if you have a result that does  
20 not match at one marker or more, then it's an exclusion. So  
21 we're confined to basically making a match at every marker  
22 that gives a result.

23 Q. Okay. So on these particular nine markers then,  
24 eight of them matched precisely, correct?

25 A. That's correct.



1 Q. You did not get enough of a reaction to make a  
2 comparison on the ninth point; is that right?

3 A. I didn't get any result at all.

4 Q. So with the eight that matched then, you were not  
5 able to exclude Ms. Cunningham as a possible source; is that  
6 correct?

7 A. That's correct.

8 Q. How often in the random population would you expect  
9 to find Ms. Cunningham's DNA profile?

10 A. At these eight markers, what we do -- well, in  
11 short, we calculate a random match probability. And what  
12 that means basically is it's the idea that you could go out  
13 into the population at random, pick out anybody, doesn't  
14 matter who, and what would be the probability that that  
15 person would also have these same DNA markers, that -- what  
16 would be the probability that this person could not also be  
17 excluded as a source and the random match probabilities for  
18 this stain were approximately 1 in 821 million for the  
19 Caucasian population, 1 in 2.9 billion for the black  
20 population, and 1 in about 1 billion for the Hispanic  
21 population.

22 Q. My understanding is there's roughly, what, 260 to  
23 270 million people who live in the United States?

24 A. Right.

25 Q. So we're talking about a result then that would mean

1 that if we took the population in the United States three  
2 times over, then that's the frequency that you'd expect -- I  
3 mean, one out of that particular sum of people where you  
4 expect this particular DNA profile in the white population,  
5 correct?

6 A. Yes.

7 Q. Let's talk about the bloodstain sample from the JC  
8 Penney bag. Were you able to match that up to the DNA  
9 profile of Ms. Cunningham?

10 A. I did.

11 Q. And what were the results there?

12 A. I got a match, or it was consistent with Bertie  
13 Cunningham at all nine of the markers tested.

14 Q. Now, you told us about what the frequency would be  
15 on eight markers there. How about -- how often would you  
16 expect to find that DNA profile on all nine genetic markers  
17 in the general population?

18 A. About 1 in 212 billion for the Caucasian  
19 population. About 1 in 1.275 trillion for the black  
20 population. And about 1 in 129.5 billion for the Hispanic  
21 population.

22 Q. So if we just stay within the white population, it's  
23 212 billion?

24 A. That's correct.

25 Q. And there are approximately 6 billion people in the

1 world?

2 A. Yes.

3 Q. The stain on the white T-shirt, were you able to  
4 match the genetic marks there between that and that of Ms.  
5 Cunningham?

6 A. I examined two different stains on the white  
7 T-shirt, and both of them, two differing degrees, were  
8 consistent with Bertie Cunningham.

9 Q. Anything to exclude Ms. Cunningham from those  
10 stains?

11 A. No.

12 Q. What -- again, how many genetic markers did you --  
13 were you able to match up on those two stains?

14 A. The first stain that I examined which would have  
15 been the stain that David Davenport listed as Stain 1, I  
16 matched at eight markers, and it was the same -- the profile  
17 that I recovered from that was the same as the profile I  
18 recovered from the trunk seal.

19 Q. So that -- again, that would be expected in the  
20 white population -- that's 1 in, what, over 800 million; is  
21 that right?

22 A. For the Caucasian population, right.

23 Q. How about the second stain from the white T-shirt?

24 A. I amplified that with two -- we have two different  
25 kits that we use, because the first kit that is normally --

1 the one that gives the most -- not most inclusive, but the  
2 higher, I guess, statistical probabilities, that kit didn't  
3 quite work as well in this stain as the other ones did, so I  
4 used a second kit which I normally only use when we're  
5 analyzing stains for entry into the crime sample database.  
6 But I went ahead and utilized that kit on this stain as well,  
7 and recovered a match with Bertie Cunningham at 9 -- 9 of 14  
8 genetic markers.

9 Q. Again, frequency in the general population for that  
10 match?

11 A. For this stain profile, the random match probability  
12 for that is approximately 1 in 19.39 billion for the  
13 Caucasian population. One in about 4 billion for the black  
14 population. And 1 in about 10.6 billion for the Hispanic  
15 population.

16 Q. Did you also receive a sample from David Davenport  
17 that purported to be from the bloodstain at 2025 Portsmouth?

18 A. I did.

19 Q. Did you compare that blood sample against that  
20 profile of Ms. Cunningham?

21 A. I did.

22 Q. What were the results?

23 A. It was consistent.

24 Q. On how many genetic markers?

25 A. All nine of the first nine tested. It was the same

1 as the JC Penney bag from the trunk.

2 Q. Finally, I want to talk to you about the hair that  
3 was recovered from the rock here. Can you do DNA testing on  
4 hair?

5 A. Yes. You basically -- when you're analyzing DNA  
6 from hairs, you're recovering it from the root. The cells in  
7 the root are the cells that are going to contain the type of  
8 DNA that we use in this test. And so that's what we looked  
9 at.

10 Q. Now, if you're doing hair, there's what's called  
11 mitochondria of DNA analysis, isn't it?

12 A. Yes.

13 Q. That's actually -- if we're looking at the actual  
14 shaft of the hair, there's actually DNA material that --  
15 actually it's from the mother's side, isn't it?

16 A. That's right.

17 Q. Did you do that kind of DNA testing in this case or  
18 did you do just what I'm going to call nuclear DNA?

19 A. We don't perform mitochondrial DNA testing in our  
20 laboratory.

21 Q. If you have a hair that's been removed, at the very  
22 bottom would there be a root to that hair?

23 A. If it's been removed forcibly, yes. If it falls out  
24 naturally, there's usually not enough cellular material to  
25 utilize.

1 Q. In this case the hair that you analyzed, did it have  
2 root material?

3 A. Yes.

4 Q. Then were you able to do the same type of PCR DNA  
5 analysis as you had on the blood samples?

6 A. I was.

7 Q. What were the results of the DNA comparison between  
8 the DNA in the hair that was submitted to you and the DNA  
9 profile of Ms. Cunningham?

10 A. The DNA from the hair -- from the hair root was  
11 consistent with the DNA profile from Bertie Cunningham.

12 Q. On how many genetic markers?

13 A. Nine of the nine tested. It was the same as the  
14 stain from 2025 Portsmouth and the stain from the JC Penney  
15 bag in the trunk.

16 Q. And in the white population, what's the frequency of  
17 seeing that in that profile?

18 A. About 1 in 212 billion.

19 Q. Thank you, sir.

20 MR. DAVIS: I'll pass the witness.

21 Cross-Examination

22 By Ms. Balido:

23 Q. Mr. Donahue, I have one report of yours dated  
24 February 27th, the year 2001, and I don't think I have  
25 your -- that's your supplement report; is that correct?

1       A.    That's the only report that I wrote in this case,  
2   because it was a follow-up, a DNA report.  It's going to be  
3   listed as a supplemental report to the first one which was  
4   written by David.

5       Q.    Okay.  In addition to the items that Mr. Davis  
6   talked about, you also tested some blue denim shorts and blue  
7   green plaid boxers; is that correct?

8       A.    Yes.

9       Q.    And those were delivered to you by who?

10      A.    James Rogers.

11      Q.    Of the Garland Police Department?  Or can you tell?

12      A.    Yes, Garland Police Department.

13      Q.    And those items were listed from coming from a  
14   laundry room at 1718 Barclay; is that correct?

15      A.    Right.

16      Q.    And did you do analysis on those items as well?

17      A.    I did.  Initially I analyzed them to determine if  
18   there was any blood on these items.  I detected human blood  
19   on stains on the denim shorts, and I didn't detect any stains  
20   with the visual characteristics of blood on the boxer shorts.

21      Q.    And what did the profile reveal to you once you did  
22   the test?

23      A.    When I did the DNA analysis on the stains on these  
24   shorts, I recovered from one stain from the shorts a profile  
25   that was male in origin, so obviously it couldn't match

1 Bertie Cunningham. The other stain I recovered a profile  
2 that indicates a mixture at one genetic marker but again,  
3 it's a male -- the majority of this DNA profile is from a  
4 male and even at that one marker where there's a mixture,  
5 Bertie Cunningham was excluded.

6 Q. Okay. Do DNA labs have to go through any sort of  
7 certification?

8 A. They don't have to, no, but ours is.

9 Q. Okay. And are there others in the area that are not  
10 certified that you know of?

11 A. The other DNA labs in the area that I can think of  
12 offhand are Gene Screen, and I believe they are accredited.  
13 Obviously SWIFS in Dallas, Fort Worth, Tarrant County Medical  
14 Examiner. I think there might be one other, I believe  
15 they're all accredited.

16 Q. Okay.

17 A. But not only the accreditation, but there are also  
18 standards that have to be followed by federal law to receive  
19 funding for this type of analysis.

20 Q. Okay. And the Texas Department of Public Safety has  
21 all that in order?

22 A. Yes.

23 Q. Okay. And you don't do mitochondrial DNA there?

24 A. Right.

25 Q. Why is that?



1       A.    It's fairly new.  It's extremely expensive to  
2 perform, and we really at our laboratory don't get a lot of  
3 call to perform that type of analysis.

4               MS. BALIDO:  Judge, I don't have anything  
5 further.

6               MR. DAVIS:  Nothing further, Your Honor.

7               THE COURT:  May he be excused, subject to  
8 recall?

9               MS. BALIDO:  No objection.

10              MR. DAVIS:  No objection.

11              THE COURT:  Thank you.  You are excused,  
12 subject to recall, sir.

13              THE COURT:  The State may continue.

14              MS. MILLER:  Call Shirley Bard to the stand.

15              MS. BALIDO:  Judge, there's a matter that we  
16 need to take up outside the presence of the jury.

17              MS. MILLER:  Judge, I don't think there is --

18              THE COURT:  Sheriff, if you'd retire the jury.

19              THE BAILIFF:  All rise.

20              (Jury excused from courtroom.)

21              THE COURT:  The jury is being excused from the  
22 courtroom.

23              Mr. Murphy, counsel, visitors in the gallery, you  
24 may be seated.

25              Will you raise your right hand, please, ma'am.

1 (Witness sworn.)

2 THE COURT: Thank you. Have a seat to my  
3 left.

4 MS. BALIDO: Judge, really, when the jury was  
5 going out, I was talking to Ms. Miller, and it's in regard to  
6 the -- this witness may testify at a later time about an  
7 extraneous offense. And I just want to make sure on the  
8 record that everybody knows that that's not going to be gone  
9 into unless we have a hearing outside the presence of the  
10 jury.

11 MS. MILLER: Judge, she is also a punishment  
12 witness. Notice was given regarding terroristic threats made  
13 by the defendant, but we have no intention in going into  
14 those during our case in chief. And I told Ms. Bard prior to  
15 coming into the courtroom for her to make sure that she did  
16 not go into any of those statements or actually threats that  
17 were made by the defendant to her.

18 THE COURT: Is that understood, ma'am?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. With that  
21 understanding, may we forgo the hearing and bring the jury  
22 back?

23 MS. BALIDO: That's fine, Judge.

24 THE COURT: Sheriff, may we have the jury,  
25 please.

1 THE BAILIFF: Yes, sir.

2 THE COURT: Jury is returning to the courtroom  
3 at this time.

4 (Jury returned to courtroom.)

5 THE COURT: Jurors may be seated.

6 Mr. Murphy, counsel, visitors in the gallery, you  
7 may be seated.

8 Ladies and gentlemen of the jury, this witness has  
9 been sworn in. She is under oath.

10 SHIRLEY BARD  
11 was called as a witness by the State and, after having been  
12 first duly sworn, testified as follows:

13 Direct Examination

14 By Ms. Miller:

15 Q. I'm going to ask you to pull the microphone a little  
16 bit closer to you or lean a little but closer. And can you  
17 introduce yourself to the jury and spell your last name for  
18 the court reporter?

19 A. Yes. I'm Shirley Ann Bard. Last name is B-a-r-d.

20 Q. Okay. Ms. Bard, I want to direct your attention  
21 back to last year, year 2000, can you tell this jury where  
22 you were employed at the time?

23 A. R&R Designs, 1112 Virginia Street in Terrell, Texas.

24 Q. Can you explain to the jury what R&R Designs is,  
25 what type of business?

1 A. Well, they make all sorts of things for boats,  
2 doors, just a little bit of everything.

3 Q. How long were you employed by R&R Designs?

4 A. Eight years.

5 Q. When did you quit R&R Designs?

6 A. January the 10th of this year.

7 Q. Of this year, 2000?

8 A. Uh-huh. Uh-huh.

9 Q. When you were employed at R&R Designs, tell the jury  
10 what type of work you did.

11 A. I was a welder. I was TIG and MIG.

12 THE REPORTER: I'm sorry?

13 THE WITNESS: A welder, TIG and MIG.

14 Q. (By Ms. Miller) TIG meaning -- the initials T-I-G  
15 and MIG, M-I-G; is that correct?

16 A. That's correct.

17 Q. And approximately how many other welders were  
18 employed out there?

19 A. Oh, we had anywhere from 3 to 8, 10. It's just  
20 according to what they needed at the time.

21 Q. Were you familiar, or are you familiar with a person  
22 you later came to know as Jedidiah Isaac Murphy?

23 A. I didn't know him as that.

24 Q. Okay. Did you later come to find out the person  
25 that you knew, his name was actually Jedidiah Isaac Murphy?

1 A. Yes.

2 Q. Can you tell the jury what name you knew him as?

3 A. Jim Hines.

4 Q. Now, do you see that person in the courtroom today?

5 A. Yes, I do.

6 Q. Could you point him out and describe what he's  
7 wearing?

8 A. He's wearing a suit and black tie and a black  
9 jacket.

10 MS. MILLER: Your Honor, ask the record to  
11 reflect the witness has identified the defendant in open  
12 court.

13 Q. (By Ms. Miller) Ms. Bard, did the defendant, who  
14 you identified and you said that you knew as Jim Hines, did  
15 he work with you out at R&R Designs in early 2000?

16 A. Yes.

17 Q. Was -- what was his job?

18 A. He was a MIG welder actually when they hired him on,  
19 and I taught him how to TIG.

20 Q. Okay. Now, I'm sure that a lot of the jurors don't  
21 necessarily know what MIG welding and TIG welding is. Let's  
22 talk about MIG welding, M-I-G welding first. Can you explain  
23 what MIG welding is to the jury?

24 A. You have a wire gun or a roll of wire at the back of  
25 you that comes through a line and you use a trigger so that

1 your temperature of the MIG, whatever you want, the wire  
2 comes out and puts the pieces of metal together.

3 Q. Now, what is the difference between MIG welding and  
4 TIG welding?

5 A. Well, TIG welding, there's two kinds of TIG. You do  
6 it with a pedal and you do it with a button on a line that  
7 comes up and you got a little handle on it and you have to  
8 push a button and put your filler rod into it as you get it  
9 hot.

10 Q. Now, I notice when you are making that explanation  
11 to the jury, you're using --

12 A. I'm using both hands.

13 Q. Both hands?

14 A. Yes, you use both hands except when you're fusing.  
15 When you're fusing, you can use one hand, but you always have  
16 that rod ready.

17 Q. Now, Ms. Bard, you said when the defendant was  
18 originally hired at R&R Designs, he was a MIG welder. How  
19 many hands do you have to use to do MIG welding?

20 A. One.

21 Q. Okay. And do you recall whether the defendant was  
22 right or left-handed?

23 A. No, I don't.

24 Q. Okay. But regardless of whether the person is right  
25 or left-handed, in order to do TIG welding the person is

1 required to use both hands?

2 A. Both hands.

3 Q. Now, did you have occasion to train the defendant in  
4 TIG welding?

5 A. Yes, I did.

6 Q. The two-handed welding?

7 A. Yes, I did.

8 Q. And when you trained the defendant in this TIG  
9 welding, tell the jury approximately how long it took you to  
10 train him, over how long a period of time, about how many  
11 hours a day? Just rough estimate?

12 A. There's so many of them that I have trained. It's  
13 hard to place just one. Most of them welded, including Jim,  
14 welded junk stuff for at last a half a day, just pieces of  
15 metal that we brought in from outside that was junk that they  
16 welded together for at least a half day. I only had one  
17 other welder that started within two hours after I started  
18 training her.

19 Q. And approximately how long did the defendant work at  
20 R&R Designs while you were there?

21 A. (No response.)

22 Q. A few months?

23 A. Probably. I don't know -- so many people came and  
24 went so often.

25 Q. Were you the person who -- well, who was the foreman

1 of the shop?

2 A. Jerry Thornton.

3 Q. Okay. Even though Jerry Thornton was the foreman of  
4 the shop in name, who actually pretty much ran the shop,  
5 supervised what the other welders were doing?

6 A. Well, he come in and tell me what he wanted done and  
7 I pretty much did it. I didn't have a title.

8 Q. Right. You didn't have a title, but were you the  
9 one who basically had to tell the other welders what needed  
10 to be done, the priorities, that type of thing?

11 A. The ones that would listen, and the others I told  
12 Jerry he'd have to go tell them.

13 Q. Okay. And, Ms. Bard, so were -- was the defendant  
14 one of the people who you would supervise, even though you  
15 didn't necessarily have the title of supervisor?

16 A. Uh-huh. Yes.

17 Q. Okay. Did the time -- during the time that you  
18 worked with the defendant, supervised him, helped train him  
19 as the TIG welder, the two-handed welder, did you notice  
20 whether or not the defendant had any problems using his left  
21 hand?

22 A. I didn't notice any problem with any hand.

23 Q. Okay. Did he complain to you at any time that he  
24 could not do the two-handed welding because of any injury to  
25 his left hand?



1 A. Not to my knowledge.

2 Q. Did the defendant, at any time he worked with you,  
3 tell you about having injured his left hand?

4 A. Not to my knowledge.

5 Q. Did the defendant, while he worked with you, ever  
6 black out?

7 A. No.

8 Q. Did the defendant, while he worked with you, ever  
9 tell you that he had hallucinations?

10 A. No.

11 Q. Did the defendant, while he worked with you, ever  
12 suffer a seizure that you knew of?

13 A. No.

14 Q. While the defendant worked for you, did the  
15 defendant -- or worked with you, did he ever claim that he  
16 had an alter ego or split personality?

17 A. No.

18 Q. While the defendant worked with you during the  
19 earlier part of 2000, did he ever tell you that he was  
20 suicidal?

21 A. No.

22 Q. As far as any complaints about the defendant's left  
23 hand, did he make any complaints other than just being sore  
24 from learning how to do the TIG welding?

25 A. Well, we all got sore learning how to TIG weld.

1 Everybody I had come in there cried with their hands.

2 Q. So during the months that you worked with the  
3 defendant and helped train him in the TIG welding, you never  
4 saw or heard of a problem where he could not use his left  
5 hand or have any feeling in his left hand?

6 A. No more than all the other welders that learn --  
7 come in and didn't know how to weld that learned how to  
8 weld. They all cried with their hands. They just had to  
9 keep on going until they got strong enough to do it.

10 Q. And when you're doing the two-handed welding, you  
11 said that you have to have the rod ready?

12 A. You have to have the rod and you fill it by using  
13 this hand and you run the filler rod through your fingers to  
14 go and you're pushing a button with this hand so you've got  
15 two things going and this is hard to hold. And you have to  
16 go in several different directions.

17 Q. Okay.

18 MS. MILLER: Thank you, Ms. Bard. I'll pass  
19 the witness at this time.

20 MR. BYCK: Your Honor, we will respectfully  
21 reserve the right to cross-examine this witness at a later  
22 time.

23 THE COURT: Thank you, Ms. Bard. You may step  
24 down.

25 MR. DAVIS: Your Honor, at this time the State

1 will call Harlan Bailey.

2 (Witness brought forward.)

3 THE COURT: Good afternoon, sir. Will you  
4 raise your right hand.

5 (Witness sworn.)

6 THE COURT: Thank you, sir. Mr. Bailey, may I  
7 invite you to have a seat over here to my left, please.

8 The State may continue.

9 MR. DAVIS: Thank you.

10 HARLAN BAILEY

11 was called as a witness by the State and, after having been  
12 first duly sworn, testified as follows:

13 Direct Examination

14 By Mr. Davis:

15 Q. Would you please tell us your full name?

16 A. Harlan Wade Bailey.

17 Q. Mr. Bailey, where do you live right now?

18 A. Grand Saline, Texas.

19 Q. How are you employed?

20 A. Griffin Products, welder.

21 Q. And where is Griffin Products located?

22 A. Wills Point.

23 Q. And I think you told us that you're employed there  
24 as a welder; is that right?

25 A. Yes, sir.

1 Q. How long have you been employed by Griffin Products?

2 A. Right at four years.

3 Q. As a welder out there, what kind of -- what kind of  
4 duties do you have? What kind of products do y'all make at  
5 Griffin Products?

6 A. We build restaurant equipment, sinks, tables.

7 Q. I want to direct your attention back to June of last  
8 year. This will be June 2000. Were you employed at Griffin  
9 Products at that time?

10 A. Yes.

11 Q. Did an individual that you later came to know as  
12 Jedidiah Murphy start working out there with you?

13 A. Yes.

14 Q. Do you see him in the courtroom this afternoon?

15 A. Yes, sir.

16 Q. If you would, just please point him out and tell us  
17 what he's wearing.

18 A. The suit, the glasses.

19 MR. DAVIS: Your Honor, may the record please  
20 reflect this witness is identifying the defendant in open  
21 court.

22 Q. (By Mr. Davis) Was this the first time that you had  
23 ever met Mr. Murphy?

24 A. Yes, sir.

25 Q. When he got hired out there at Griffin Products,

1 what type of work did he start doing?

2 A. He was a welder.

3 Q. What kind of welding was Mr. Murphy doing for  
4 Griffin Products?

5 A. He was welding on stainless steal.

6 Q. Is that the same kind of welding that you do?

7 A. Yes, sir.

8 Q. In that kind of a job, would the defendant be  
9 required to use his left hand as part of his employment out  
10 there?

11 A. Yes.

12 Q. What would be required -- if you're doing welding  
13 like y'all were, what kind of use of your left hand would you  
14 have to have?

15 A. You would have to have real good use of it. You'd  
16 have to do lots of hammering and control of a switch and hold  
17 the metal while you are welding it and tacking it and such as  
18 that.

19 Q. So you're going to have to have pretty good use of  
20 your hands?

21 A. Yes.

22 Q. While he was out there, did y'all start talking a  
23 little bit about family matters, personal matters, that sort  
24 of thing?

25 A. Yes.

1 Q. And at some point did you have a conversation with  
2 the defendant about an injury that he had to his left hand?

3 A. I couldn't remember.

4 Q. All right. Did he ever mention to you that he was  
5 having problems with his left hand while he was out there  
6 working with you?

7 A. No.

8 Q. At some point did you have a discussion with him  
9 about how much money he was making out there at Griffin  
10 Products?

11 A. I don't remember.

12 Q. At some point shortly after he worked -- I believe  
13 about three weeks after he started working at Griffin  
14 Products, did the defendant have some sort of injury out  
15 there?

16 A. I don't remember it three weeks --

17 Q. Okay. Sometime though while he was out there?

18 A. Yes.

19 Q. Did anybody actually witness the injury?

20 A. No.

21 Q. Did the defendant at least complain that he had hurt  
22 his theft thumb in the injury?

23 A. Yes.

24 Q. As a result of that, did he leave Griffin Products?

25 A. Yes.

1 Q. Is it your understanding that he went to -- under a  
2 doctor's care at that point?

3 A. Yes.

4 Q. Did you ever see the defendant back up there at  
5 Griffin Products after he injured his left thumb?

6 A. One time.

7 Q. Do you recall when that was?

8 A. Sometime after he had the surgery.

9 Q. So it was your understanding he actually had surgery  
10 on his left thumb, right?

11 A. Yes.

12 Q. Did you have a conversation with the defendant when  
13 he came back up there?

14 A. A short one.

15 Q. What was the nature of the conversation?

16 A. I just asked him how it was going and how did  
17 everything work, you know, on the surgery. And he took his  
18 thumb and hit it on a table and said he had no feeling in it.

19 Q. In the left thumb?

20 A. Yeah.

21 Q. Make any other complaints about his left hand?

22 A. No, that was about it.

23 Q. Was that the last time that you saw him?

24 A. That's the last time I've seen him.

25 Q. Thank you, Mr. Bailey.

1 MR. DAVIS: I pass the witness, Your Honor.

2 Cross-Examination

3 By Mr. Byck:

4 Q. Mr. Bailey, my name is Mike Byck. I represent Jim.

5 Sometime after June the 22nd, which was when Mr.  
6 Murphy was injured --

7 A. Yes.

8 Q. -- you saw him back up at the -- at your plant; is  
9 that right?

10 A. Yes.

11 Q. And what did he do again with his thumb?

12 A. Took his thumb and hit it on the edge of a work  
13 table, said he had no feelings in it.

14 Q. Did he have a splint or a cast on the thumb?

15 A. No.

16 Q. Just his regular thumb.

17 A. Yeah.

18 Q. And he banged it on the edge of a table?

19 A. Uh-huh.

20 Q. Hard?

21 A. Not -- about like you did there.

22 Q. About like I did?

23 A. Yeah.

24 Q. And said he had no feeling in it?

25 A. Uh-huh.



1 MR. BYCK: Thank you, sir. Pass the witness.

2 MR. DAVIS: No further questions.

3 THE COURT: May this witness be excused?

4 MS. BALIDO: No objection.

5 MR. DAVIS: No objection.

6 THE COURT: Thank you, sir. You are excused.

7 MR. DAVIS: Call Dr. William Vandiver.

8 (Witness brought forward.)

9 THE COURT: Good afternoon. May I ask that  
10 you raise your right hand, please.

11 (Witness sworn.)

12 THE COURT: Thank you. Have a seat to my  
13 left, please.

14 DR. WILLIAM VANDIVER

15 was called as a witness by the State and, after having been  
16 first duly sworn, testified as follows:

17 Direct Examination

18 By Mr. Davis:

19 Q. Sir, would you please tell us your full name?

20 A. William Richard Vandiver.

21 Q. Are you a medical doctor?

22 A. Yes, sir.

23 Q. Dr. Vandiver, do you have a specialty?

24 A. Orthopaedic surgery.

25 Q. Where is your practice located?

1 A. It's located in Kaufman, Texas.

2 Q. Can you tell us a bit about your educational and  
3 your professional training that you've received?

4 A. Yes, sir. I went to Baylor University for an  
5 undergrad degree, bachelor of arts. I then went to Michigan  
6 State University for medical school for four years. I then  
7 went to -- I did a one-year internship in Flint, Michigan. I  
8 then went to New York City, the Bronx, and did a four-year  
9 orthopaedic residency. And then I did a further year of  
10 orthopaedic sports medicine in Detroit, Michigan.

11 Q. Are you board certified?

12 A. I am not fully board certified in orthopaedics yet,  
13 because you have to be in practice for 22 months, but I have  
14 passed the written part, the first part of the boards.

15 Q. Doctor, I want to direct your attention back to June  
16 29th of 2000, and ask you whether an individual that you  
17 later came to know as Jedidiah Murphy came to you as a  
18 patient out there in Kaufman?

19 A. Yes, sir, he did.

20 Q. And do you recall what his complaint was or the  
21 reason why he was coming to visit with you?

22 A. He came in under workman's comp claim. He stated  
23 that he had an accident at work involving his left thumb. He  
24 believed he might have dislocated it.

25 Q. Now, as a result of your treating him, did your

1 clinic start compiling certain records concerning his  
2 treatment and care out there?

3 A. Yes, sir.

4 MR. DAVIS: If I may approach, Your Honor.

5 THE COURT: You may.

6 Q. (By Mr. Davis) State's Exhibit 69, do you recognize  
7 this to be a true and correct copy of the records at your  
8 office previously provided to me, along with this affidavit?

9 A. Yes, it is.

10 MR. DAVIS: At this time we'll offer State's  
11 Exhibit 69 which has been on file more than 14 days prior to  
12 trial, Your Honor.

13 (State's Exhibit No. 69 offered)

14 MR. BYCK: No objection to State's 69.

15 THE COURT: Admitted.

16 (State's Exhibit No. 69 admitted)

17 Q. (By Mr. Davis) Doctor, if you need to refer to your  
18 records, please do so.

19 So his chief complaint was an injury to his left  
20 thumb; is that correct?

21 A. Yes, sir.

22 Q. Your initial impression was that it might have been  
23 dislocated?

24 A. According to his history, it seemed that there  
25 was -- that was a possibility, although it was not

1 dislocated at the time I examined him.

2 Q. Okay. What was the condition of the thumb when you  
3 did examine it?

4 A. His left thumb was quite swollen, tender around this  
5 area, the lower part of the thumb as it enters the palm.  
6 There was some redness around it. There was very little  
7 motion that he could do actively or that I could do to try to  
8 examine it because of the pain.

9 Q. Did you make your diagnosis at that time?

10 A. Yes, sir, I did.

11 Q. What was your diagnosis?

12 A. My diagnosis was that he had ruptured the ulnar  
13 collateral ligament. It's commonly called the skier's  
14 thumb. It's on this side of the thumb. And often when the  
15 thumb gets pulled forcefully back this way, it can rupture  
16 with or without a dislocation.

17 Q. Did you determine that surgery would be required?

18 A. Yes, sir, at the time I felt that because of the  
19 level of his symptoms and also the type of work that he did  
20 which was very hand or manual intensive, that he would  
21 benefit from such an operation.

22 Q. Okay. Did you actually perform surgery on the  
23 defendant at a later date?

24 A. Yes, sir.

25 Q. And was that surgery performed at Presbyterian in

1 Kaufman?

2 A. Yes, sir, it was.

3 MR. DAVIS: Your Honor, at this time we'll  
4 offer State's Exhibit Number 70, which is certified -- which  
5 is an original copy of records from Presbyterian Hospital in  
6 Kaufman. Again, it's accompanied with an affidavit and has  
7 been on file more than 14 days prior to trial.

8 (State's Exhibit No. 70 offered)

9 MR. BYCK: No objection, State's 70.

10 THE COURT: Admitted.

11 (State's Exhibit No. 70 admitted)

12 Q. (By Mr. Davis) Can you describe the surgery that  
13 you performed on the defendant?

14 A. Yes, sir, I made a -- kind of an incision over on  
15 this side of the thumb, where I was describing, to expose the  
16 area where that ligament was located. Once I exposed it, I  
17 recognized it as being torn and I did a repair -- end to end  
18 repair. After that was done, I tested to make sure it was  
19 stable, including the joints. Since he was under anesthesia,  
20 I could now examine him more fully. I then closed the skin,  
21 placed him into a splint which included the thumb, and he  
22 went home that same day.

23 Q. Did you feel that you had repaired all the damage to  
24 his thumb?

25 A. Yes, sir.

1 Q. Were there any complications that you could  
2 determine at that time?

3 A. No, there were not.

4 Q. Did you feel like the surgery had been successful?

5 A. Yes, sir, I did.

6 Q. Was there any sign of nerve damage to the thumb that  
7 you observed during that surgery?

8 A. No, I did not.

9 Q. And as I understand, he was discharged that same  
10 day; is that right?

11 A. Yes, it was day surgery.

12 Q. Now, going forward to July the 20th of that same  
13 year, did the defendant return for a post-operative visit  
14 with you?

15 A. Yes, he did.

16 Q. And did he have any complaints at that time?

17 A. He was a little sore, and he also stated that he had  
18 no sensation on this side of his thumb, approximately this  
19 area if I remember correctly.

20 Q. Uh-huh. Did that surprise you?

21 A. It didn't really surprise me. At the time I felt  
22 that because the surgery was in somewhat close proximity to  
23 that area, that post-operative swelling could have caused the  
24 nerve to go out temporarily.

25 Q. Did you suggest any treatment for the -- the

1 complained of numbness at that time?

2 A. No, at that time I recommended to Mr. Murphy that we  
3 observe it. I felt very strongly that it was probably just  
4 swelling since I had not visualized a nerve during the case,  
5 and he agreed to that.

6 Q. Uh-huh. Did he return to your office again on  
7 August the 17th?

8 A. Yes, he did.

9 Q. The purpose of that visit was what?

10 A. It was a follow-up visit to check on his wound and  
11 also to check that complained of numbness.

12 Q. Was he still complaining of numbness?

13 A. Yes, he was.

14 Q. Do you remember specifically what his complaint was?

15 A. He was concerned because he said that he had no  
16 sensation whatsoever in that area, that he could literally  
17 stick a pin -- he didn't say he had actually done that, but  
18 he felt like he could do that and would have no -- no  
19 feeling. He was concerned about it because of his occupation  
20 as a welder.

21 Q. Did he feel that that would interfere with his  
22 ability to perform as a welder?

23 A. Yes, he did feel that way.

24 Q. Were you surprised by the complaint coming now in  
25 August of 2000?

1 A. No, not particularly.

2 Q. Did you decide to do something for Mr. Murphy at  
3 that time?

4 A. Yes, I did. Since it had been, I believe, six weeks  
5 since the surgery, I suggested that he go get EMG and nerve  
6 conduction studies to see if there was evidence on their  
7 part -- on the test part of any nerve damage.

8 Q. All right. If you would, nerve conduction test on a  
9 thumb, exactly what are we talking about there?

10 A. What they do is -- this test is performed by either  
11 a neurologist or a rehab doctor. And what they do, they  
12 commonly use it for detecting carpal tunnel. They put some  
13 small rings on the fingers, and they have some electrodes  
14 that stimulate the nerves at certain levels and they can  
15 literally read the conduction speed or how fast the impulse  
16 goes from where they stimulate the nerve to the -- to the  
17 ring electrode around the finger.

18 Q. So this test, as I understand, is designed to detect  
19 any sort of damage to a nerve in this particular part of the  
20 hand; is that right --

21 A. Correct.

22 Q. -- the thumb? Who did you refer the defendant to  
23 for that particular test?

24 A. Dr. James Garrison.

25 Q. And what type of doctor is Dr. Garrison?



1 A. He's a physical medicine rehabilitation specialist.

2 Q. Did you get word on September the 7th that Dr.  
3 Garrison had in fact conducted those nerve conduction tests  
4 on the defendant?

5 A. Yes, I did.

6 Q. Did he actually send a copy of his report to you?

7 A. Yes, he did.

8 Q. And what were the findings for Dr. Garrison after he  
9 had conducted these nerve conduction tests on the defendant?

10 A. His findings were that the -- first of all, all the  
11 motor nerves, the nerves that generate the motion were  
12 intact. He stated that the median nerve, which is a nerve  
13 that gives sensation to this entire pulp space of the thumb,  
14 which is the nerve involved in carpal tunnel. He also stated  
15 that when he stimulated the radial nerve at the wrist, which  
16 is well below where the surgery was done, that he didn't get  
17 a clear impulse back to the thumb. But at the time he  
18 believed it might have been an impulse that was delivered by  
19 the median nerve since it occupies a greater space in the  
20 thumb.

21 Q. So as I understand, we have two nerves in the  
22 thumb. We have a median nerve, correct?

23 A. Correct.

24 Q. What portion of the thumb would the median nerve be?

25 A. The median nerve provides innervation to nearly all

1 of the pad, as well as all of the front of the thumb,  
2 including this part of the hand.

3 Q. Okay. Was there any indication of any injury to the  
4 median nerve in the left thumb?

5 A. No, there was not.

6 Q. What area again would the radial nerve control in  
7 that thumb?

8 A. The radial nerve would control the back of the  
9 thumb.

10 Q. Okay. Now, was it the back of the thumb that the  
11 defendant was complaining of numbness, or was it the area  
12 controlled by the median nerve that he was complaining of  
13 numbness?

14 A. He was complaining of numbness in an area that was  
15 closer to where the median nerve innervation is more so than  
16 the radial nerve.

17 Q. Again, as I understand, the test did not reveal any  
18 damage to the median nerve, right?

19 A. No, it did not.

20 Q. And the way that you looked at the test, did you  
21 interpret it that it was showing damage to the radial nerve  
22 or not?

23 A. It did not seem conclusively to show damage to the  
24 radial nerve.

25 Q. As I understand, the radial nerve would innervate

1 the back portion of the nerve anyway -- of the thumb?

2 A. Correct.

3 Q. Correct?

4 A. Correct.

5 Q. That was not the area that the defendant was  
6 complaining of, was it?

7 A. No, he was complaining more of the side and kind of  
8 the -- what we call the ulnar pulp space which would be about  
9 roughly around this area right here.

10 Q. Directing your attention to October the 3rd of 2000,  
11 was the defendant scheduled to come into your office for a  
12 scheduled office visit?

13 A. Yes, he was.

14 Q. Did the defendant show up in your office on that  
15 date for his scheduled visit?

16 A. No, he did not.

17 Q. When did you last actually see the defendant,  
18 Jedidiah Isaac Murphy?

19 A. I last saw him on October -- I'm sorry, August 17th,  
20 the day I referred him for the -- for the test.

21 Q. Do your records reflect any phone calls from the  
22 defendant to your office after August 17th, the year 2000?

23 A. Yes, there was a phone call that I took. Mr. Murphy  
24 was concerned that his employer had gotten a copy of the EMG  
25 report. The employer had stated that he needed to go back to

1 work at this point. He was -- he was quite upset about  
2 that. I told him that I would look into it and see what  
3 further options he might have. I'd have to discuss it with  
4 my office personnel that are specialists in comp issues.

5 Q. Uh-huh. When did he make that phone call?

6 A. I don't recall the exact day, but I believe it was  
7 probably within a week, to my best recollection of the -- the  
8 day that Dr. Garrison sent out his results.

9 Q. So that's going to be sometime perhaps  
10 mid-September?

11 A. Could be, around that area.

12 Q. Certainly it was before October the 3rd, wasn't it?

13 A. Yes, it was.

14 Q. Now, when a -- when a patient comes in, a new  
15 patient, do you take a history from that patient?

16 A. Yes. Yes, I do.

17 Q. What's the purpose of that?

18 A. Well, you take a general history to detect any  
19 health problems, allergies, things like that, prior  
20 surgeries. Also, in the case of injuries like that, you  
21 always ask the patient if they've had a prior injury or prior  
22 problem in that area that might affect the current complaint.

23 Q. Okay. In this particular case, sir, did you ask the  
24 defendant whether or not he had suffered a prior injury to  
25 his left thumb?

1 A. I did. He did not -- to the best of my  
2 recollection, he did not suffer a prior injury to his thumb.

3 Q. Okay. At least that's the history that he gave to  
4 you; is that right?

5 A. Correct.

6 Q. And when a patient gives you a history, do you  
7 assume since he's there for medical care, that he's going to  
8 tell you the truth?

9 A. Yes, sir.

10 Q. At that time did you have any -- any reason to  
11 believe that the defendant had in fact suffered or claimed an  
12 on-the-job injury to his left thumb back in 1997?

13 A. No, he did not give me that history.

14 Q. When you talked about a past medical history, did  
15 you ask for possible medications that he might be taking at  
16 the time that he came in to see you?

17 A. Yes, I -- the patients fill out a form where they  
18 are instructed to write any current medications. And then I  
19 do ask while I'm speaking to them.

20 Q. Okay. In this case did the defendant indicate that  
21 he was taking any medications at that time?

22 A. He did not -- he did not list any medications on the  
23 form. I do not know. I don't recall if I asked him if he  
24 was taking any pain medication -- if he was taking any pain  
25 medication. I don't recall any other medications.

1 Q. When you had -- when you were taking this medical  
2 history from the defendant, did you have any of the records  
3 at your disposal to determine whether or not he was telling  
4 you the truth?

5 A. No, I did not.

6 MR. DAVIS: May I approach, Your Honor.

7 THE COURT: You may.

8 MR. DAVIS: Your Honor, at this time we'll  
9 offer State's Exhibit 65, which will be the business records  
10 of Addison Harrington, Incorporated. Again, these have been  
11 on file more than 14 days prior to trial.

12 (State's Exhibit No. 65 offered)

13 MS. BALIDO: 65?

14 MR. BYCK: No objections, State's 65.

15 THE COURT: Admitted.

16 (State's Exhibit No. 65 admitted)

17 Q. (By Mr. Davis) When he told you no prior injuries  
18 to the left thumb, again, taking from your testimony, you did  
19 not have access to the records of Addison Harrington,  
20 Incorporated at that time, did you?

21 A. No, I did not.

22 Q. Referring now to those records, State's Exhibit  
23 Number 65, sir, do you see a page that I'm looking at that's  
24 entitled Addison-Harrington, Incorporated Accident  
25 Investigation Form?

1 A. Yes, I did.

2 Q. Do you see the name of the injured employee to be  
3 Jedidiah Isaac Murphy?

4 A. Yes.

5 Q. Do you see the date for that accident as 3-14-97 at  
6 11 o'clock?

7 A. Yes, I do.

8 Q. Do you see a notation or a line that says "Apparent  
9 Nature of Injuries"?

10 A. Yes.

11 Q. And in handwriting does it say out beside that  
12 "broke left thumb at knuckle"?

13 A. Yes, I do.

14 Q. And is there an explanation for how the injury  
15 occurred with writing following: "Pulling string line tight  
16 and nail holding string line came out of form hitting his  
17 left thumb"?

18 A. Yes.

19 Q. Again, there's a date on the bottom of that of 3-17  
20 of '97; is that right?

21 A. Yes, it is.

22 Q. Did the defendant ever mention that injury claim to  
23 you, Dr. Vandiver?

24 A. No, sir.

25 Q. Would that have been important to know?

1 A. Yes, it would have been.

2 Q. Why would it have been important for you to know  
3 that?

4 A. It would have been important to determine if he had  
5 any prior injuries to see if that had any affect on his  
6 current injury.

7 Q. Uh-huh. Do you have any knowledge whether that  
8 might affect the validity of his workers compensation claim?

9 A. I can't say that for sure, but it's a possibility.

10 Q. Did you ask the defendant whether or not he was  
11 suffering from any seizures or any other illnesses?

12 A. I remember he mentioned -- he mentioned depression,  
13 and he mentioned seizures.

14 Q. Okay. The history that he gave you, did it show a  
15 surgery to his left hand occurring in 1996?

16 A. Yes.

17 Q. Do you remember asking the defendant to give you  
18 some more details about that surgery?

19 A. Yes.

20 Q. And do you remember what Mr. Murphy told you there  
21 about the surgery to his left hand?

22 A. Yes, I do.

23 Q. Would you please tell the members of the jury what  
24 the defendant told you in your office?

25 A. He told me that he had suffered a gunshot wound to



1 his left hand, the palm area. He said that he had several  
2 surgeries to that area, reconstructive type surgeries,  
3 especially involving the nerves. He said that a doctor -- he  
4 did not give me the name of the doctor at the time, stated  
5 that doctor tried several times to reconstruct the nerves or  
6 repair the nerves, but that it never resulted in returning  
7 sensation.

8 Q. Uh-huh. What was your impression when he gave you  
9 that type of history? Did you think it would have some  
10 impact on his ability to recover from the injury to his left  
11 thumb?

12 A. At the time I didn't think it would have an affect  
13 on his left thumb. In isolation it didn't seem to affect the  
14 thumb at all at the time.

15 Q. And in fact if you look at Dr. Garrison's records,  
16 did in fact the defendant give the same type of history to  
17 Dr. Garrison?

18 A. Yes, he did.

19 Q. When he gave you that history out there again, did  
20 you have to assume that he was telling you the truth?

21 A. Yes, I did.

22 Q. Did you have any reason to disbelieve his account of  
23 how his injury occurred or the severity of his injury?

24 A. No, I did not.

25 Q. Doctor, did the -- did you have access to any

1 medical records at that time concerning the injury to the  
2 defendant's left hand?

3 A. No, I did not.

4 Q. Had you -- more specifically had you viewed the  
5 records from a Jeffrey T. DeHaan, M.D. who is a physician in  
6 Texarkana, Texas?

7 A. No, I did not.

8 Q. Had you reviewed any records from St. Michael's  
9 Hospital in Texarkana, Texas, regarding the defendant?

10 A. No, I did not.

11 Q. Had you reviewed any records from Doctors Hospital  
12 in New Boston, Texas, regarding the defendant and the injury  
13 to his left hand?

14 A. No, I did not.

15 Q. Had you reviewed any records from Wadley Regional  
16 Medical Center in Texarkana regarding this injury, sir?

17 A. No, sir.

18 MR. DAVIS: Your Honor, at this time the State  
19 will offer State's Exhibit 71 which are copies of records  
20 from Doctors Hospital in New Boston. These records, again,  
21 have been tendered to counsel and they've been on file more  
22 than 14 days prior to trial. State's Exhibit 72, copies of  
23 records from Jeffrey T. DeHaan. Again, they've been on file  
24 more than 14 days prior to trial. Records from Wadley  
25 Regional Medical Center in Texarkana. These records have

1 been on file more than 14 days prior to trial. Finally,  
2 State's Exhibit 74, records from St. Michael's Hospital,  
3 which again have been on file with the Court more than 14  
4 days prior to trial.

5 (State's Exhibit No. 71 through 74 offered)

6 MR. BYCK: No objection to 71 through 74.

7 THE COURT: All admitted.

8 (State's Exhibit No. 71 through 74 admitted)

9 Q. (By Mr. Davis) Doctor, have you -- have you ever  
10 had the opportunity to review the records that I've just had  
11 admitted into evidence?

12 A. Yes, I have.

13 MR. DAVIS: May I approach, Your Honor.

14 THE COURT: You may.

15 Q. (By Mr. Davis) Doctor, if we could -- starting off  
16 with State's Exhibit 71, these will be the records from --  
17 from Doctors Hospital in New Boston, Texas. The first page,  
18 do you recognize what type of document that is, sir?

19 A. Yes.

20 Q. What are we looking at, an emergency room record?

21 A. Yes, it is.

22 Q. The name of the patient up there, does that show to  
23 be a Matthew Murphy?

24 A. Yes, it does.

25 Q. With date of birth of 9-18-75?

1 A. Yes.

2 Q. Does it show a street address of 501B West Walters,  
3 New Boston, Texas?

4 A. Yes, it does.

5 Q. And does it show basically a history of the  
6 complaint that that patient is making at the time?

7 A. Yes, it does, briefly.

8 Q. What is the date for that record for the emergency  
9 room?

10 A. 9-13-96.

11 Q. 9-13-96?

12 A. Correct.

13 Q. All right. What complaint did the patient who  
14 referred to himself as Matthew Murphy make when he came into  
15 the hospital?

16 A. It says that he complained of a puncture wound to  
17 the palm of the left hand, secondary to being shot in the  
18 hand.

19 THE REPORTER: I'm sorry. If you can slow  
20 down for me.

21 A. I'm sorry. Complaint of a puncture wound to palm of  
22 left hand, secondary to being shot in hand with pellet gun  
23 while handling it at around 1:15 in the morning, or 12:15 in  
24 the morning.

25 Q. Uh-huh. As far as the treatment, was he released

1 with instructions to come back later?

2 A. Yes, he was.

3 Q. What sort of treatment, if any, was actually given  
4 to him before he left that hospital?

5 A. He was given pain medication. He was also given  
6 some antibiotics.

7 Q. If you'd look at State's Exhibit Number 73, which  
8 will be records from Wadley Regional Medical Center. Have  
9 you had an opportunity to look through these records?

10 A. Yes, I have.

11 Q. Do these records show that the individual, again  
12 identified as Matthew Murphy, appeared at Wadley Regional  
13 Medical Center for treatment of his left hand?

14 A. Yes, it did.

15 Q. And if we look at that again, refer to whatever  
16 portion of those records that you need to, but do those  
17 records relate that he was admitted for treatment for his  
18 left hand?

19 A. Yes, he was.

20 Q. The attending physician was who?

21 A. Dr. DeHaan.

22 Q. All right. Are you familiar with Dr. DeHaan?

23 A. I hadn't heard of him, but I understand he's a hand  
24 specialist.

25 Q. And again, was there a history that was provided

1 concerning that injury?

2 A. By Mr. Murphy, yes, as I stated previously.

3 Q. Same type of history provided?

4 A. Yes, sir.

5 Q. And at some point was a decision made by Dr. DeHaan  
6 to actually remove the pellet from his left hand?

7 A. Yes, that was correct.

8 Q. All right. In the hospital records whenever surgery  
9 is performed does the hospital keep an operative report or an  
10 operative note?

11 A. Yes, it does with the patient's chart.

12 Q. Who actually prepares that operative note? Would it  
13 be the attending physician or surgeon?

14 A. Yes, sir.

15 Q. In those records has Dr. DeHaan actually prepared an  
16 operative note to detail what occurred during the surgery on  
17 Mr. Murphy's left hand?

18 A. Yes, he provided the details of the surgery.

19 Q. If you don't mind, would you please read that  
20 operative note for the members of the jury?

21 A. Okay. It states date of operation is 9-13-96.  
22 Attending surgeon is Dr. DeHaan. His pre-operative diagnosis  
23 was a gunshot wound to the left hand with swelling and  
24 paresthesias of the hand.

25 Q. What does paresthesias mean?

1           A.   Paresthesias means the patient is complaining of  
2 decreased or altered sensation anywhere in the body. In this  
3 case in the fingers.

4           Q.   If there's swelling in a hand -- in the left hand,  
5 for instance, would you expect perhaps there to be some  
6 pressure on the nerves controlling that hand?

7           A.   Yes, that's possible.

8           Q.   And would -- could that account for numbness in the  
9 hand?

10          A.   Yes, it could.

11          Q.   Would you continue, please?

12          A.   Sure. He states that his procedure was incision and  
13 drainage with fasciotomy. Fasciotomy is a release of some of  
14 the tough tissue underneath the skin which in the case of  
15 swelling, there's no room for the swelling to go anywhere so  
16 it can damage the structures within the facie, so he split  
17 that open. And then he turned the hand over because the  
18 pellet was near the skin in the back. He made a small  
19 incision in the back and removed the pellet and closed both  
20 wounds.

21          Q.   In the operative note does he make any mention about  
22 possible nerve damage that he observed?

23          A.   He states the nerves were inspected and there was no  
24 nerve laceration.

25          Q.   If you would, as a doctor, what does that mean to

1 you? What did he see?

2 A. That means that he visualized the nerves and did not  
3 see any damage to them that could be detected by the human  
4 eye.

5 Q. Okay. There appear to be any complications at all  
6 with that surgery?

7 A. Not in this operative note, no.

8 Q. Would you consider that to be very complicated  
9 surgery?

10 A. Not particularly, no.

11 Q. Just -- would it be fair to say that he went in  
12 there and he removed the pellet and he closed it up?

13 A. Correct.

14 Q. Do you know how long that surgery took?

15 A. I do not know exactly, but I -- I would imagine  
16 something like that would not take more than an hour, but  
17 that's only a guess.

18 Q. Is there any note that any reconstructive surgery  
19 was necessary on that left hand?

20 A. No, there was not.

21 Q. Now, that operative note there, does that square  
22 with the history that Mr. Murphy gave to you when he came up  
23 to your office in Kaufman?

24 A. Only to the extent that there was a gunshot wound to  
25 his hand.



1 Q. How does it differ from the history that he gave  
2 you?

3 A. His history was that he suffered the gunshot wound  
4 to his hand, suffered nerve injury at that time, and that  
5 further surgeries were an attempt to repair or reconstruct  
6 the nerves, which was ultimately unsuccessful.

7 Q. So that there's no evidence of any nerve damage,  
8 correct?

9 A. Not according to these documents, no.

10 Q. Have you reviewed Dr. DeHaan's records, too?

11 A. Yes, I have.

12 Q. Any indication in his -- in his office records of  
13 any nerve damage to Mr. Murphy's left hand?

14 A. No, sir.

15 Q. No reconstructive surgery?

16 A. No, sir.

17 Q. And looking at the records from St. Michael's  
18 Hospital in Texarkana, does it appear that Mr. Murphy came in  
19 sometime after the surgery because one of the sutures had  
20 come loose or there was something he needed attention to?

21 A. Yes, he -- I believe he called Dr. DeHaan stating  
22 that his palm wound, I believe, had popped open. Dr.  
23 DeHaan's instructions were to go to the emergency room, have  
24 the emergency room doctor see what was going on, and possibly  
25 contact him if it seemed like it was something that needed

1 immediate attention.

2 Q. In the records from St. Michael's is there an  
3 indication that the defendant is making some complaint about  
4 numbness to -- to his fingers in the left hand?

5 A. Not at the time that he returned with the split  
6 open. I remember seeing a small part of the note said  
7 sensory was okay based on the ER doctor's examination.

8 MR. DAVIS: If I can approach, Your Honor.

9 THE COURT: You may.

10 Q. (By Mr. Davis) Doctor, I'm now looking at the  
11 records from St. Michael's, State's Exhibit 74, is there a  
12 nursing assessment there with some notes about what the  
13 patient was stating at that time?

14 A. Yes, there is.

15 Q. Okay. And is he complaining about numbness in any  
16 of his fingers in his left hand at that time?

17 A. It states that he complained of numbness of the  
18 fourth and fifth fingers.

19 Q. Fourth and fifth fingers?

20 A. Yes, sir.

21 Q. No other fingers?

22 A. No, sir.

23 Q. All right. My left hand -- what would you regard to  
24 be my fourth and fifth finger?

25 A. That would be the fourth and the fifth.

1 Q. These two fingers only, correct?

2 A. Yes, sir.

3 Q. No complaint to these three fingers here or to the  
4 thumb at that point, correct?

5 A. No, sir.

6 Q. And that's a history -- would you assume that's a  
7 history that comes straight from the patient himself?

8 A. Yes, as told to the nurse.

9 Q. Now, at that time, again, the patient was referring  
10 to himself by what name?

11 A. Matthew Murphy.

12 Q. Is he still giving the same home address there in  
13 New Boston, Texas?

14 A. Yes.

15 Q. Doctor, as a rule when patients come to see you, do  
16 they use their true name?

17 A. Yes, I assume so.

18 Q. Have you ever had an occasion where somebody came to  
19 you for medical care and used an alias?

20 A. Not to my knowledge.

21 Q. Adopted a false name, perhaps the name of a brother  
22 to seek medical care from you?

23 A. Not to my knowledge.

24 Q. While the defendant was under your care, Doctor, did  
25 he ever complain of hearing voices?

1 A. No, he did not.

2 Q. Did he ever complain of an alter ego?

3 A. No, he did not.

4 Q. Ever complain of hallucinations to you?

5 A. No, sir.

6 Q. Ever claim to be suicidal?

7 A. No, sir.

8 Q. Certainly I guess as a physician, you're trained to  
9 make those sorts of assessments of risks for your patients,  
10 aren't you?

11 A. Yes, sir. In general observation, yes.

12 Q. In your general observations of Mr. Murphy, did you  
13 ever feel him to be suicidal?

14 A. No, sir.

15 Q. Had you thought that he was in that state, would you  
16 have recommended or sought additional care for him?

17 A. If I felt that he was upset to the point where that  
18 would be a possibility, I certainly would have tried to say  
19 something to him myself. If he communicated back any threats  
20 to do harm to himself, I certainly would have tried to obtain  
21 help, yes.

22 Q. Was there ever a time where he was unresponsive or  
23 incoherent with you?

24 A. No, sir.

25 Q. Was he always able to provide information to you?

1 A. Yes, he was.

2 Q. Again, the information that he provided to you, you  
3 assumed was the truth, right?

4 A. Yes, I did.

5 MR. DAVIS: Thank you, Doctor. I'll pass the  
6 witness.

7 MR. BYCK: Your Honor, we will respectfully  
8 request to cross-examine this doctor at a later date.

9 THE COURT: Given what I understand and note  
10 to be the schedules of professionals in the medical field,  
11 putting the defense on alert, give this individual adequate  
12 time to make arrangements with regard to other professional  
13 responsibilities that may come to his attention.

14 MR. BYCK: We certainly will.

15 Doctor, how much advance notice could we give you?  
16 Would half a day do it, or would you need an entire full  
17 day?

18 THE WITNESS: I'd prefer a day.

19 MR. BYCK: A full day?

20 THE WITNESS: Yes.

21 MR. BYCK: Yes.

22 THE COURT: With that understanding, Doctor,  
23 you are excused.

24 THE WITNESS: Thank you.

25 MR. DAVIS: Your Honor, at this time the State

1 will call Kirsten Adames.

2 (Witness brought forward.)

3 THE COURT: Good afternoon. May I ask that  
4 you raise your right hand, please.

5 (Witness sworn.)

6 THE COURT: Have a seat to my left, if you  
7 please.

8 The State may continue.

9 MR. DAVIS: Thank you.

10 KIRSTEN ADAMES

11 was called as a witness by the State and, after having been  
12 first duly sworn, testified as follows:

13 Direct Examination

14 By Mr. Davis:

15 Q. Would you please tell us your full name?

16 A. Kirsten Eileen Adames.

17 Q. And, Ms. Adames, how are you employed?

18 A. I'm a workers comp adjuster for Trinity Insurance.

19 Q. Is that company located here in Dallas?

20 A. Yes, sir.

21 Q. How long have you been working for that insurance  
22 company?

23 A. About two and a half years.

24 Q. How long have you been in the insurance business?

25 A. 21.

1 Q. What are your duties and responsibilities as a  
2 workers compensation claims adjuster?

3 A. Handle claims. I administer benefits as they are  
4 due, medical and lost time benefits.

5 Q. Now, workers compensation, would it be fair to say  
6 that if you receive an on-the-job injury, then you may be  
7 entitled to be paid workers compensation benefits?

8 A. Yes, sir.

9 Q. Does the system work so that if an employee sustains  
10 an injury, the employer is actually required to send in  
11 notice of that injury, isn't he?

12 A. Yes, they are.

13 Q. And is the employee then due medical care for his  
14 injuries?

15 A. Yes. If the claim is found compensable, yes.

16 Q. And if it's found to be compensable, is he also  
17 entitled to certain monetary benefits to be paid on a regular  
18 basis, too?

19 A. Yes.

20 Q. When it's determined that that person is no longer  
21 medically disabled and he's able to go back to work, do his  
22 payments -- his weekly benefits continue or are they  
23 discontinued?

24 A. They are discontinued.

25 Q. Directing your attention now back to June of the

1 year 2000, were you still employed with Unitrin at that time?

2 A. Yes, I was.

3 Q. Were you also still in the workers compensation unit  
4 there?

5 A. Yes, I was.

6 Q. Did a file come to you regarding an employee by the  
7 name of Jedidiah Isaac Murphy?

8 A. Yes.

9 Q. Were you the adjuster assigned to that file?

10 A. Yes.

11 Q. If you will, when a file -- when a file such as that  
12 comes in, what do you do actually? If you got notice that  
13 this person is -- is claiming an on-the-job injury, what do  
14 you do first?

15 A. Well, you know as an adjuster we make a three-point  
16 contact. We contact the -- you know, try to get in touch  
17 with the claimant, verify the injury with the employer, and  
18 contact the treating doctor.

19 Q. In this case did you talk with Dr. William Vandiver?

20 A. I did not talk to him personally.

21 Q. Did someone else at your direction do that?

22 A. Well, I did talk to Dr. Vandiver after the claim was  
23 already in progress. I didn't talk to him at the very  
24 beginning.

25 Q. And was it -- was it determined at some point that



1 benefits would be paid to Mr. Murphy?

2 A. Yes.

3 Q. Do you remember how much he was receiving and on  
4 what -- was it on a weekly basis that he receives his  
5 payments?

6 A. Yes, it was a weekly basis, and I do not remember  
7 the weekly amount.

8 Q. Was it your understanding that the defendant  
9 continued to see Dr. Vandiver for a period of time?

10 A. Yes.

11 Q. Was it your understanding that he actually had some  
12 surgery performed on his left thumb?

13 A. Yes.

14 Q. At a certain point, and as I understand, did your  
15 insurance company pay for all the medical expenses?

16 A. We pay for the reasonable and necessary medical  
17 expenses.

18 Q. All right. At some point were you talking with the  
19 defendant about the status of his thumb, about whether he's  
20 well enough to go back to work, whether he needs more care,  
21 were you having discussions with him?

22 A. Yes.

23 Q. And in general what was the nature of those  
24 discussions?

25 A. The fact that he was alleging that he had no feeling

1 work there at Griffin Products?

2 A. No, sir.

3 Q. Now, when you get a -- when you get a claim such as  
4 this, would it be important to know whether or not that  
5 person, the claimant has suffered an injury to the same part  
6 of his body or not?

7 A. Yeah, that's usually one of the things we try to  
8 find out. And if we find that out after the fact, there's  
9 some recourses that we take.

10 Q. Why would that be important to know up front? If I  
11 came in and I complained, for instance, that I've injured my  
12 left thumb and I can't work as a result of that left thumb  
13 being hurt, why would it be important for you as an adjuster  
14 to know if I've hurt that thumb before or made a claim  
15 before?

16 A. Because if you've had prior injury to that same part  
17 of the body, possibly the injury that you allege may not have  
18 happened on the job. It could have been a preexisting  
19 condition.

20 Q. All right. Did -- in your -- in your discussions  
21 with the defendant, did he ever mention that he had a prior  
22 injury to his left thumb?

23 A. No.

24 Q. Did you know that he had made a claim back in 1997  
25 to his left thumb, on-the-job injury?

1 A. No, sir. We do index checks. It did not show up.

2 Q. Did you know that -- at some point did you become  
3 aware that he had had an injury to his left hand back in  
4 1996?

5 A. Yes, I was aware of it.

6 Q. How did you become aware of that?

7 A. I was informed by the employer that he had  
8 suffered -- he had told them he had suffered a prior gunshot  
9 wound to the hand. The lady that actually took the report  
10 had a statement for me and had also shared with me some  
11 information about that. But he told me something different.

12 Q. Okay. So is it my understanding that you had  
13 another adjuster at your direction have a conversation with  
14 the defendant about the injury to his left hand?

15 A. Yes.

16 Q. What had the defendant told you about that when you  
17 asked him?

18 A. He told me that he was getting a gun out of the  
19 closet and that it snagged on something in the closet and  
20 discharged into his hand.

21 Q. Again, how far into this claims process did you  
22 learn that?

23 A. I knew after -- you know, probably after a month  
24 that he had suffered a prior injury to his hand, not  
25 necessarily the thumb, but it was to his hand. And so that's

1 when I started trying to search out maybe where that prior  
2 injury had further medical records.

3 Q. Again, would that be important to know as a claims  
4 adjuster if he's had a prior injury to the left hand?

5 A. Yes, sir.

6 Q. And do I understand you to say that you didn't learn  
7 about the injury from him first, but from his employer,  
8 right?

9 A. That is correct.

10 Q. And you then began searching for medical records  
11 concerning that injury?

12 A. Yes, I did.

13 Q. Did ask you the defendant to help you try to find  
14 those medical records?

15 A. Yes, we did.

16 Q. And do you remember having a discussion with him  
17 about that?

18 A. At one point -- it was when he was -- when I was  
19 discussing with him about his hand.

20 Q. Uh-huh. Did he -- did he indicate that he had  
21 records that he would provide to you?

22 A. He said he didn't have them, but they were at  
23 someone else's house.

24 Q. Did he indicate that he would get those records to  
25 you?

1 A. I don't recall.

2 Q. All right. Did the defendant provide any medical  
3 records to you concerning the injury to his left hand?

4 A. Not at all.

5 Q. Now, when you do a search for medical records, his  
6 name is Jedidiah Isaac Murphy. What name would you use?  
7 Would you use Jedidiah Isaac Murphy, or would you look under  
8 Matthew Murphy?

9 A. I would have looked under Jedidiah Isaac Murphy.

10 Q. Did he ever tell that you the records would be found  
11 under another name of Matthew Murphy?

12 A. No, sir.

13 Q. So given that, were you ever able to search and find  
14 the records from that particular injury?

15 A. Yeah, we finally did get one piece of medical  
16 information.

17 Q. What was that?

18 A. It was from a hospital, and it was under the name of  
19 Matthew Murphy. And it was a pellet wound to two fingers.

20 Q. When did you get that?

21 A. I can't remember the exact date, but I want to think  
22 it was maybe in October.

23 Q. Of last year?

24 A. Yes, sir.

25 Q. At a certain time then did you believe that the

1 defendant was able to return to work?

2 A. Yes.

3 Q. And as a result, what decisions did you make about  
4 the payment of his benefits?

5 A. I explained to him on the phone that his -- when he  
6 called me that his -- you know, I discussed with him the bona  
7 fide offer of light duty employment, what that meant to him,  
8 and he just asked does this mean I have to go back to work.  
9 And I said, yes, it is, because if you do not return to work,  
10 your benefits will cease.

11 Q. Do you remember the day that the payments stopped to  
12 Mr. Murphy?

13 A. His check was due -- I believe his checks went out  
14 on Thursday, and I found out -- the Thursday or the day that  
15 he was to return to work, I called and that's when I found  
16 out.

17 MR. DAVIS: May I approach, Your Honor.

18 THE COURT: You may.

19 Q. (By Mr. Davis) Showing you now State's Exhibit  
20 107D. Do you recognize this document?

21 A. Yes, I do.

22 Q. Okay. What type of document is this?

23 A. It's the bottom half of the check explaining what  
24 the check is for.

25 Q. Okay. Is this something that would be sent to Mr.

1 Murphy as a part of his workers compensation claim?

2 A. Yes, it comes attached to the check.

3 Q. All right. It has name Jedidiah Isaac Murphy,  
4 Griffin Products. Is this actually one of the -- a part of  
5 the check, the bottom half of the check that was sent to Mr.  
6 Murphy in connection with his claim?

7 A. Yes, it is.

8 Q. Adjuster 9W2?

9 A. That's me.

10 Q. Okay. All right. Okay. The loss date of  
11 6-22-2000, that's the date of Mr. Murphy's injury; is that  
12 right?

13 A. Yes, sir.

14 Q. The notes down there, 9-26 to 10-2 --

15 A. That was --

16 Q. -- 2000?

17 A. That would be for one week of benefits.

18 Q. So these benefits here that he received were for the  
19 weekend ending October 2nd of 2000; is that right?

20 A. That is correct.

21 Q. If the murder of Ms. Cunningham occurred on October  
22 the 4th of 2000, would it be your understanding that that  
23 would have been the last check that Mr. Murphy received with  
24 regards to his claim?

25 A. I'm sorry. Can you repeat that question?

1 Q. Was that the last check that Mr. Murphy received on  
2 his workers compensation claim?

3 A. Yes.

4 Q. Do you know whether Mr. Murphy had any other source  
5 of income other than his worker compensation claim?

6 A. No.

7 Q. Now, this -- you were saying that a statement was  
8 taken from Mr. Murphy; is that right?

9 A. Yes, it was.

10 Q. And who did you have talk with Mr. Murphy about his  
11 injury?

12 A. Joanna Gilmore with Employers Claims Adjustment  
13 Service.

14 Q. Why did you have somebody outside of Unitrin contact  
15 the defendant? Why didn't yourself talk with him or have  
16 another adjuster inside Unitrin?

17 A. Oftentimes when we get overloaded and we're unable  
18 to, you know, personally do the statement taking ourselves,  
19 oftentimes we have to hire someone to do it for us because  
20 we're loaded down.

21 Q. Okay. So that was done at your direction; is that  
22 correct?

23 A. Yes, it was.

24 Q. Was that made a part of your workers compensation  
25 claim file?



1 A. Yes, it is.

2 Q. Did you have -- did Ms. Gilmore actually send a copy  
3 of that interview for your review?

4 A. Oh, yes.

5 Q. And again, that typed transcript of that statement  
6 became a part of your business records with Unitrin; is that  
7 what I understand?

8 A. Yes, it did.

9 Q. Now, Unitrin does maintain business records on a  
10 regular basis, don't they?

11 A. Oh, yes.

12 Q. Entries made out there would be by someone who has  
13 personal knowledge of the events; is that right?

14 A. Yes, uh-huh.

15 Q. They are made on a regular basis, day-to-day,  
16 week-to-week?

17 A. Any time we have a phone call or a piece of mail.

18 Q. As I understand then, these would have been part of  
19 your business records, correct?

20 A. Yes, sir.

21 Q. The records, I take it, too, are generated at or  
22 near the time of the occurrence; is that right?

23 A. Yes, sir.

24 MR. DAVIS: If I can approach, Your Honor.

25 THE COURT: You may.

1 Q. (By Mr. Davis) I hand you now several pieces of  
2 paper. Actually this will be 18 pages of documents. Do you  
3 recognize what I've had marked as State's Exhibit 125?

4 A. Yes.

5 Q. Is that the statement of Jedidiah Isaac Murphy that  
6 was given to Joanna Gilmore at your direction on September  
7 13, 2000?

8 A. Yes, it is.

9 Q. Again, when you received this, you made this a part  
10 of your actual file in this case; is that right?

11 A. Yes, sir.

12 MR. DAVIS: At this time we will offer State's  
13 Exhibit Number 125.

14 (State's Exhibit No. 125 offered)

15 MS. BALIDO: Judge we'd like an opportunity to  
16 see that exhibit. We haven't seen it yet.

17 MR. BYCK: Your Honor, may I approach the  
18 witness to get an exhibit?

19 THE COURT: You may.

20 MR. BYCK: I thank the Court.

21 (Counsel examines document.)

22 MR. BYCK: No objection, State's 125.

23 THE COURT: Admitted.

24 (State's Exhibit No. 125 admitted)

25 MR. DAVIS: May I publish, Your Honor, just

1 very briefly?

2 THE COURT: You may.

3 MR. DAVIS: Just portions of it.

4 Ladies and gentlemen, I'm now going to read to you  
5 portions of the document, State's Exhibit 125, certain  
6 questions and answers here directed to Mr. Murphy. On page  
7 10: What happened to you -- "what happened after you had the  
8 surgery done?

9 "Uh, well, there was a lot of, I had a cast put on  
10 my hand and I had a, just partial of my thumb was exposed,  
11 just like the tip of it and the next morning, I went home  
12 basically that day and just, you know, went to sleep, just  
13 slept all day, I guess, like the effects of anesthesia or  
14 whatever.

15 "Uh-huh.

16 "When I woke up the next day I couldn't feel the  
17 end of my thumb so I called the doctor immediately 'cause I  
18 didn't know what was up and I asked him, you know, if maybe  
19 that was something, maybe the anesthesia still or uh some of  
20 the, you know, medicine or what have you. I explained to him  
21 the day I went in to his office the very first time I had  
22 previous injury and I had four dead fingers and the only  
23 finger I could feel was my thumb and I, you know, I told him  
24 that it was real crucial that whatever he did to me, he  
25 explained to me before that when this tendon -- when this

1 usually snaps."

2 He's asked: "And that's because of your other four  
3 fingers?"

4 And his response is: "Yes, ma'am, they're dead from  
5 a gunshot wound. I told the guy that hired me, Mr. Steve, he  
6 knew about it. I told him. I usually tell everybody that I  
7 work for. But it's never really ever slowed me down or, you  
8 know, after I was shot it slowed me down for awhile to get  
9 used to it but once I'd gotten used to it it's never hindered  
10 me really in any way. As long as I could feel one finger I  
11 knew when I had something, whether or not it was hot or, you  
12 know, it kind of just kept me just normal. But I knew  
13 something was wrong the day after surgery and I couldn't feel  
14 my finger. I called Dr. Vandiver immediately and then I  
15 called him, I don't know, I guess about every other day for a  
16 week, two weeks."

17 On page 13 the adjuster is now asking him about the  
18 prior injury to the left hand.

19 "Can you give me the particulars of that?"

20 "I had a gunshot wound right through the center of  
21 it and it severed the media nerve in my left hand. Just  
22 basically blew it in half. I had a hole completely through  
23 my hand."

24 Again, later referring to the same injury: "Did you  
25 receive an impairment rating from the previous gunshot

1 wound?

2 Um more or less, no. I didn't stick around long  
3 enough to, more or less, it's more or less the same kind of  
4 situation that this. They wanted me to stay off work and I  
5 probably could've but it was an accidental gunshot wound, you  
6 know. I grabbed the gun and was going to move it from one  
7 end of the closet to the other end of the closet and it went  
8 off so I just figured that was my fault so I didn't, you  
9 know, I didn't know anything about an impairment rating or  
10 anything like that, I just went, with feeling in one hand I  
11 didn't, it slowed me down, sure, but as long as I could use  
12 my thumb and (inaudible) when I grab something as long as I  
13 knew how much pressure I had on it 'cause of the pressure to  
14 my thumb so I like adopted kind of."

15 Again, questions about the surgery. "How many  
16 surgeries did you have on the left hand?

17 "My, I had one for the gunshot wound and one for  
18 the thumb. But the one for my hand was like a couple of  
19 different stages of surgery. One guy opened it and the other  
20 guy sewed it up kind of deal. It was pretty lengthy  
21 surgery."

22 I believe my last question to you, Ms. Adames, was  
23 you didn't know whether the defendant had any other source of  
24 income; is that correct?

25 A. That is correct.

1 Q. When you terminated his claim?

2 A. Correct, because if he had had other source of  
3 income, he would not be entitled to the full benefit wages.

4 MR. DAVIS: Your Honor, at this time we'll  
5 offer State's Exhibit Number 66. These are the records from  
6 Citizens National Bank. Again, these have been on file with  
7 the Court more than 14 days prior to trial.

8 (State's Exhibit No. 66 offered)

9 MR. BYCK: No objections to State's 66.

10 THE COURT: Admitted.

11 (State's Exhibit No. 66 admitted)

12 MR. DAVIS: Permission to publish.

13 THE COURT: Granted.

14 MR. DAVIS: Ladies and gentlemen, State's  
15 Exhibit 66 are records provided by the Citizens National Bank  
16 of Wills Point, Texas. They refer to the defendant, Jedidiah  
17 Isaac Murphy, and to the account that he had with that bank.  
18 Refer to specifically a statement summary for the time period  
19 between September 17th, 2000, and October 15, 2000. Shows  
20 that the balance forward from those dates was \$17.35. Total  
21 debits during that time period were \$88. Total credits were  
22 zero. Closing balance as to 10-15-2000 was negative \$70.65.  
23 On October 4th of 2000, a 20-dollar charge was made against  
24 that account for non-sufficient funds. On October 6th, 2000,  
25 a 10-dollar charge for overdraft fee. Again, on October 11,

1 a 20-dollar charge for non-sufficient fund fee. And finally  
2 on October 13, \$8 maintenance fee.

3 Your Honor, I'll pass the witness.

4 MR. BYCK: May we approach, Your Honor.

5 THE COURT: You may.

6 Sheriff, five minute recess.

7 THE BAILIFF: All rise.

8 (Jury excused from courtroom.)

9 THE BAILIFF: All rise.

10 (Jury returned.)

11 THE COURT: Jurors may be seated.

12 Mr. Murphy, counsel, visitors in the gallery and the  
13 witness, you may be seated.

14 MR. BYCK: Your Honor, we have no questions of  
15 this witness.

16 THE COURT: Thank you. You may step down,  
17 ma'am.

18 THE WITNESS: Thank you.

19 THE COURT: The State may continue.

20 MR. DAVIS: Yes, Your Honor. May it please  
21 the Court, members of the jury, at this time the State of  
22 Texas rests its case in chief.

23 (State of Texas Rests)

24 THE COURT: State's rests at 4:53 p.m. on the  
25 6th of June.

1 Ladies and gentlemen of the jury, we will stand in  
2 recess for your purposes until tomorrow morning at 9:30 a.m.  
3 We have some unattended business that we will begin  
4 addressing about an hour or so before you get here. Have a  
5 good evening. Recall the instructions I have heretofore  
6 given to you. Obviously, they remain in force and effect.  
7 Have a good evening. We'll see you tomorrow morning, 9:30  
8 a.m.

9 THE BAILIFF: All rise.

10 (Jury retired from the courtroom.)

11 THE COURT: Do the witnesses that counsel  
12 cares to be heard tomorrow morning before the jury returns,  
13 have they been notified? Do they know to be here at 8:30  
14 a.m.? Is there any problems that the Court can assist  
15 counsel with regard to securing their presence?

16 MR. BYCK: My doctor said he would be here at  
17 1 o'clock.

18 MS. BALIDO: I --

19 MR. DAVIS: Your Honor, may I be excused, with  
20 Ms. Miller remaining, with the Court's permission? She is  
21 fully capable.

22 THE COURT: Depending upon Ms. Miller's  
23 acquiescence.

24 (Recess of proceedings.)  
25



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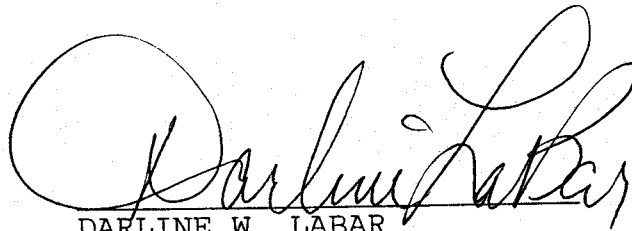
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 28th day of October, A.D., 2001.



DARLINE W. LABAR  
Official Court Reporter  
194th Judicial District Court  
Dallas County, Texas  
(214) 653-5803

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